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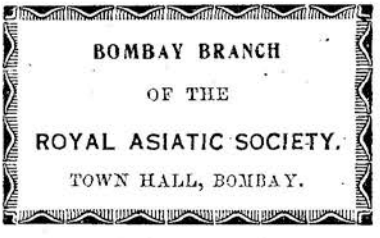

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THE UNREPEALED ACTS OF THE GOVERNOR-GENERAL IN COUNCIL.

THIRD EDITION.

BY

D. E. CRANENBURGH,

PLEADER.

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VOLUME I.,

CONTAINING ACTS FROM 1834 TO 1874.

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Calcutta:

PRINTED AND PUBLISHED BY D. E. CRANENBURGH,

AT HIS "LAW-PUBLISHING PRESS,"

NO. 57, BOW BAZAR STREET.

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PREFACE.

THE unrepealed Acts of the Supreme Council as published in this edition are comprised in three volumes. The first volume, which has just been published, contains Acts from 1834 to 1874.

To enhance the usefulness of this volume, I have prefixed a Chronological Table, showing how far each Act up to 1874 is repealed, amended, or otherwise altered, and at what page each unrepealed Act is printed; and I have added a general Index, which refers to the subject-matter of each Act printed in this volume.

The Merchant Seamen's Act (I. of 1859) and a few other Acts relating to seamen have been omitted, as a consolidating measure is now before the Indian Legislative Council.

D. E. CRANENBURGH.

November 1, 1893.

THE UNREPEALED ACTS

OF THE

GOVERNOR-GENERAL IN COUNCIL.

TABLE OF CONTENTS.

Year.	No.	Subject-matter.	Page.
1834	II.	Secretaries to Government	1
1835	XIX.	Asst. to Agent for Sardárs in Dekkhan ...	1
1836	VII.	Municipal Taxes, Bombay	2
,,	X.	Indigo Contracts, L. P. and N.-W. P. ...	2
,,	XXI.	Zilas, L. P. and N.-W. P.	3
1837	IV.	Property in Land	4
,,	VI.	Málguzárs, Katak	4
,,	XXXVI.	Criminal Jurisdiction, Madras ...	5
1838	XVI.	Suits, Bombay	5
,,	XIX.	Coasting Vessels, Bombay	6
,,	XXV.	Wills made between Feb. 1, 1839, and Jan. 1, 1866	9
1839	VII.	Tahsildárs, Madras	16
,,	XX.	Levy of Haqqs, Bombay	16
,,	XXIV.	Ganjam and Vizagapatam	17
,,	XXIX.	Dower	19
,,	XXX.	Inheritance	21
,,	XXXII.	Interest	25
1840	VIII.	Panchávyats, Madras	26
,,	XV.	Agents of Foreign Sovereigns, Bombay ...	26
,,	XVII.	Salt Laws, Madras	27
1841	X.	Registry of Ships	27
,,	XII.	Sales of Land for Revenue-arrears ...	38
,,	XIX.	Curators in cases of Successions ...	38
,,	XXIV.	Illusory Appointments: Infant Property.	43
,,	XXVII.	Unclaimed Dividends on Insolvent Estates.	46
1842	IV.	Boat Regulations, Madras Roads ...	47
1843	V.	Slavery	57
1844	VI.	Transit and other Duties; Salt; Madras...	58
,,	XIX.	Town-duties, Bombay	60

Year.	No.	Subject-matter.	Page.
1846	I.	Pleaders	61
,,	IX.	Boats in Harbours, Madras	62
,,	XI.	Khándesh and Ahmadnagar	63
1847	IX.	Assessment of New Lands, L. P. ...	68
,,	XX.	Copyright	70
1848	XV.	Officers of Supreme Courts	76
,,	XX.	Attendance before Collectors ...	77
1849	X.	Commissioner of Revenue, Madras ...	78
1850	V.	Coasting Trade	79
,,	XI.	Amending Act X. of 1841	80
,,	XII.	Public Accountants	81
,,	XVIII.	Protection of Judicial Officers ...	83
,,	XIX.	Binding Apprentices	84
,,	XX.	Tributary Mahals, Katak	90
,,	XXI.	Non-forfeiture of Rights for Loss of Caste.	91
,,	XXIII.	Land-revenue, Calcutta	92
,,	XXV.	Forfeiture of Deposits on Land-sales ...	94
,,	XXXIII.	Sale of Patni Tenures, Bengal ...	95
,,	XXXIV.	State Prisoners	96
,,	XXXVII.	Inquiries into Behaviour of Public Servants.	97
,,	XLIV.	Board of Revenue, L. P.	101
1851	VIII.	Tolls on Bridges and Roads	102
,,	XII.	Land-revenue, Madras Town ...	104
1852	VIII.	Sheriffs' Fees	107
,,	XI.	Titles to Rent-free Estates, Bombay ...	109
,,	XXX.	Naturalization of Aliens	117
1853	II.	Public Charges on Landholders ...	120
,,	VI.	Summary Suits for Arrears of Rent, &c....	121
,,	XI.	Harbour of Bombay, Shore-nuisances ...	123
,,	XIX.	Evidence, Bengal	125
,,	XX.	Pleaders	126
1854	XVI.	Police, N.-W. P.	127
,,	XX.	Agent to Governor-General, Rámgarh, Jangal Mahals, and Midnapur... ...	127
,,	XXIV.	War-knives in Malabar	128
,,	XXVI.	Court of Wards, Bengal	129
,,	XXXI.	Real Actions: Conveyance of Land ...	131
1855	X.	Witnesses, Madras and Bombay ...	134
,,	XI.	Mesne Profits: Improvements ...	135
,,	XII.	Suits for Wrongs by and against Executors and Administrators	136
,,	XIII.	Compensation for Loss occasioned by Death.	138
,,	XXI.	Court of Wards, Madras	140
,,	XXIII.	Administration of Mortgaged Estates	142

Year.	No.	Subject-matter.	Page.
1855	XXIV.	Penal Servitude	143
,,	XXVIII.	Repeal of Usury-laws	146
,,	XXXII.	Embankments, L. P.	147
,,	XXXVII.	Santál Districts	156
1856	VIII.	Gaols, Bombay	158
,,	IX.	Bills of Lading	159
,,	XI.	European Deserters	160
,,	XII.	Civil Court Amíns, Bengal	162
,,	XIII.	Police, Presidency Towns	164
,,	XV.	Re-marriage of Hindu Widows ...	177
,,	XVIII.	Collector of Calcutta	179
,,	XX.	Police Chaukidárs, Bengal	180
,,	XXII.	Tolls, Karatoyá River	194
1857	II.	Calcutta University	196
,,	IV.	Tobacco, Bombay	201
,,	V.	Oriental Gas Company	204
,,	VII.	Uncovenanted Agency, Madras ...	211
,,	X.	Santál Districts	211
,,	XI.	State Offences	212
,,	XIII.	Opium, Bengal	214
,,	XXI.	Station of Howrah	221
,,	XXII.	Bombay University	227
,,	XXV.	Forfeitures	232
,,	XXVII.	Madras University	234
,,	XXIX.	Land Customs, Bombay	239
1858	I.	Compulsory Labour, Madras... ...	243
,,	III.	State Prisoners	245
,,	XXXI.	Alluvial Lands, Bengal	246
,,	XXXIV.	Lunacy, Supreme Courts	247
,,	XXXV.	Lunacy, Mufassal Courts	254
,,	XXXVI.	Lunatic Asylums...	259
1859	V.	Ghátwáli Lands, Birbhúm	266
,,	IX.	Claims to Property seized as forfeited ...	267
,,	X.	Rent, Bengal	269
,,	XI.	Sales of Land for Revenue-arrears, L. P. ...	300
,,	XII.	Pilots, Calcutta	316
,,	XIII.	Fraudulent Breaches of Contract by Workmen	324
,,	XX.	Máppillas, Malabar	325
,,	XXIV.	Police, Madras	328
1860	IX.	Disputes between Workmen and Employers.	336
,,	XXI.	Registration of Societies	338
,,	XXII.	Chittagong Hill Tracts	342
,,	XXVIII.	Boundary-marks, Madras	345

Year.	No.	Subject-matter.	Page.
1860	XXXIV.	Indemnity for Acts during Mutiny ...	351
,,	XLV.	Penal Code	353
,,	XLVII.	University Degrees	457
,,	XLVIII.	Amending Act XIII of 1856	458
1861	V.	Police	464
,,	XVI.	Stage-carriages	474
1862	III.	Government Seal	478
1863	XVI.	Excise on Spirits used exclusively in Arts and Manufactures	479
,,	XX.	Religious Endowments	481
,,	XXIII.	Claims to Waste-lands	487
,,	XXXI.	Official Gazette	493
1864	II.	Aden...	493
,,	III.	Foreigners	499
,,	VI.	Whipping	505
,,	XV.	Tolls on Public Roads and Bridges ...	508
,,	XVII.	Official Trustees	509
1865	III.	Common Carriers	518
,,	X.	Intestate and Testamentary Succession ...	521
,,	XV.	Parsi Marriages and Divorces ...	602
,,	XXI.	Intestate Succession, Parsis	613
,,	XXX.	Madras Irrigation Company	616
1866	V.	Bills of Exchange: Commercial Law ...	617
,,	XIV.	Post Office	618
,,	XXI.	Dissolution of Native Converts' Marriages	634
,,	XXIII.	Correcting Bombay High Court Letters Patent	642
,,	XXV.	Transfer of certain Securities to Government	642
,,	XXVI.	Subordinate Proprietors, Oudh ...	643
,,	XXVII.	Conveyance of Property in Mortgagees and Trustees	646
,,	XXVIII.	Powers of Mortgagees and Trustees ...	661
1867	I.	Ganges Tolls	673
,,	III.	Public Gambling...	677
,,	XIV.	Pándhari-tax, Central Provinces ...	682
,,	XVI.	Acting Judges	683
,,	XVIII.	Jhánsi Courts	684
,,	XIX.	Administration of Justice in Darjeeling ...	688
,,	XXII.	Sarais and Puraos	688
,,	XXIII.	Murderous Outrages, Panjáb... ...	692
,,	XXV.	Printing-presses and Books	696
,,	XXXII.	Chief Commissioners' Powers ...	704
1868	I.	General Clauses	705

Year.	No.	Subject-matter.	
1868	IV.	Exempting certain Bombay Villages in ... General Regulations	708
,,	V.	Commissioner in Sindh	708
,,	XXIV.	Inoculation, Kumáon and Garhwál ...	709
1869	I.	Taluqdárs, Oudh	710
,,	IV.	Divorce	721
,,	V.	Indian Articles of War	742
,,	XIII.	Procedure of High Court, N.-W. P. ...	787
,,	XIV.	Civil Courts, Bombay	788
,,	XV.	Evidence of Prisoners	796
,,	XVI.	Bhután Dvárs	802
,,	XX.	Volunteers	804
1870	I.	Quarantine Rules	809
,,	V.	Costs of certain Petitions	809
,,	VII.	Court-fees	810
,,	VIII.	Female Infanticide	841
,,	X.	Acquisition of Land for Public Purposes...	843
,,	XXI.	Wills of Hindus, &c.	856
,,	XXIII.	Coinage and Mint	858
,,	XXIV.	Relief of Oudh Taluqdárs	863
,,	XXVI.	Prisons	868
,,	XXVII.	Amending Penal Code	879
1871	I.	Cattle-trespass	881
,,	IV.	Coroners	889
,,	V.	Prisoners	895
,,	XIX.	Sessions Judges, Bengal and N.-W. P. ...	903
,,	XXI.	Dehrá Dun	903
,,	XXII.	Chaukidári	904
,,	XXIII.	Pensions	905
,,	XXVII.	Criminal Tribes and Eunuchs ...	910
,,	XXXI.	Weights and Measures	916
1872	I.	Evidence	919
,,	III.	Civil Marriage	967
,,	IV.	Panjáb Laws	973
,,	V.	Sindh	987
,,	IX.	Contract	988
,,	XV.	Christian Marriage	1047
,,	XVIII.	Amending Evidence Act	1073
,,	XIX.	Definition of "Coin"	1074
,,	XX.	Amending Act V. of 1872	1074
1873	II.	Burma Ferries	1075
,,	III.	Civil Courts, Madras	1078
,,	V.	Savings Banks	1084
,,	VIII.	Canals and Drainage, Northern India ...	1087

		Subject-matter.	Page.
	X.	Oaths	1107
	XIV.	Lunatic Soldiers' Property	1110
,,	XV.	Municipalities, N.-W. P. and Oudh ...	1112
,,	XVI.	Village and Road Police, N.-W. P. ...	1121
,,	XIX.	Land-revenue, N.-W. P.	1124
1874	II.	Administrator-General	1178
,,	III.	Married Women's Property	1205
,,	IV.	Foreign Recruiting	1208
,,	VIII.	Assam Chief Commissionership ...	1209
,,	IX.	European Vagrancy	1210
,,	XII.	Exercise of Powers in Sylhet ...	1219
,,	XIV.	Scheduled Districts	1220
,,	XV.	Laws Local Extent	1229

CHRONOLOGICAL TABLE OF ACTS OF THE GOVERNOR-GENERAL IN COUNCIL.

1834-1874.

[NOTE.—(a) Where an Act has been repealed in part, and the residue has been subsequently repealed, the latter repeal only has, as a rule, been noted.

(In the case of (1) Acts which have been wholly repealed or are spent, and (2) cts which apply to the Straits Settlements only, and are therefore not in force within the present limits of British India, the entries in the third and fourth columns are printed in italics.]

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1834	I	*Governor-General* . . .	*Rep. by VIII of 1868.*
	II	Secretaries to Government .	Printed at p. 1.
1835	I	*Governor of Madras* . . .	*Rep. by VIII of 1868.*
	II	Assam, *Arracan, Tenasserim* .	*Rep. by XII of 1891.*
	III	*Claims under certain Regulations.*	*Rep. by VIII of 1868.*
	IV	*Justices of the Peace, Calcutta.*	*Rep. by VIII of 1868.*
	V	*District Munsifs, Madras* .	*Rep. by VIII of 1868.*
	VI	*Khási Hills* and Cachar . .	*Rep. by XII of 1891.*
	VII	*Sessions Judges* . . .	*Rep. by VIII of 1868.*
	VIII	*Sales in Satisfaction of Decrees for Rent.*	*Rep. by XVI of 1874.*
	IX	*Salt Chaukis, Bengal* . . .	*Rep. by XII of 1876.*
	X	*Proof of Acts of Governor-General in Council.*	*Rep. by II of 1855.*
	XI	*Printing-presses* . . .	*Rep. by XXV of 1867.*
	XII	*Repealing Madras Regulations IV, 1829, and IV, 1830.*	*Rep. by VIII of 1868.*
	XIII	*S. F. Adálat, Bombay* . .	*Rep. by XVII of 1862.*
	XIV	*Magistrates, Bombay* . .	*Rep. by VIII of 1868.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1835	XV	*Evidence: Contempt: Perjury: Madras.*	*Rep. by XVII of 1862.*
	XVI	*Partial repeal of Bengal Regulation V, 1830, s. 2.*	*Rep. by VIII of 1868.*
	XVII	*Silver and Gold Coinage*	*Rep. by XXIII of 1870.*
	XVIII	*Chaprásis*	*Rep. by XVII of 1862.*
	XIX	Assistant to Agent for Sardárs in Dekkhan.	Rep. in part by XII of 1891. Amended by XII of 1891. Printed at p. 1.
	XX	*Police, Bombay*	*Rep. by XVII of 1862.*
	XXI	*Copper Coinage*	*Rep. by XIII of 1862.*
1836	I	*Light-house Funds, Cambay* .	*Rep. by XVII of 1858.*
	II	*Customs-duties, Bombay* . .	*Rep. by VIII of 1868.*
	III	*Cattle-duty, Salsette* . .	*Rep. by VIII of 1868.*
	IV	*Insolvent Debtors* . . .	*Rep. by VIII of 1868.*
	V	*Enforcement of Decrees, Bengal.*	*Rep. by VIII of 1868.*
	VI	*Prisoners under Mad. Reg. III, 1802, s. 22.*	*Rep. by XVII of 1862.*
	VII	Municipal Taxes, Bombay	Rep. by VIII of 1868, except as regards duties leviable on salt or opium. Amended (as to references) by I of 1878. Printed at p. 2.
	VIII	*Principal Sadr Amins, &c., Bengal.*	*Rep. by XII of 1873.*
	IX	*Oaths*	*Rep. by X of 1873.*
	X	Indigo Contracts, Lower Provinces and N.-W. Provinces	Rep. in part by VIII of 1868; XIV of 1870; XVI of 1874. Rep., so far as it applies to Assam, by Act XII of 1891. Printed at p. 2.
	XI	*Non-exemption from jurisdiction of certain Courts.*	*Rep. by VIII of 1868.*
	XII	*Decrees of Nawáb of Farakábád.*	*Rep. by XIII of 1869.*
	XIII	*Sicca Rupees: Pice* . . .	*Rep. by VIII of 1868.*
	XIV	*Customs-duties, Bengal* . .	*Rep. by XIII of 1871.*
	XV	*Sabáthu*	*Rep. by XXXII of 1850.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1836	XVI	*Vakil in Addl. Govt. Commissioner's Office, Madras.*	*Rep. by VIII of 1868.*
	XVII	*Begam Samrú* . . .	*Rep. by VIII of 1868.*
	XVIII	*Bhor Ghát Toll* . . .	*Rep. by II of 1837.*
	XIX	*Bank of Bengal* . . .	*Rep. by VIII of 1868.*
	XX	Batwáras, Bengal . .	Rep. (Bengal) by Ben. Act VIII of 1876. Rep. (Assam) by Reg. I of 1886. Not reprinted.
	XXI	Zilas, Bengal and N.-W. Provinces.	Rep. in part by XVI of 1874. Rep. (Assam) by Reg. I of 1886. Rep. (Punjab) by Act XVI of 1887. Printed at p. 3.
	XXII	*Eastern Canal Tolls, Lower Provinces.*	*Rep. by XII of 1873.*
	XXIII	*Gumsúr and Suráda Zamindáris.*	*Rep. by XXIV of 1839.*
	XXIV	*Judicial Officers, Madras and Bombay.*	*Rep. by VIII of 1868.*
	XXV	*Warehousing Ports* . .	*Rep. by XII of 1873.*
	XXVI	*Governor-General's Camp Police.*	*Rep. by XII. of 1891.*
	XXVII	*Vakils, Madras* . . .	*Rep. by XI of 1864.*
	XXVIII	*Municipal Assessments, Madras.*	*Rep. by XXVI of 1856.*
	XXIX	*Sadr Amins, Madras* . .	*Rep. by VIII of 1868.*
	XXX	*Thags*	*Rep. by XVII of 1862.*
	XXXI	*Government Grants, Madras* .	*Rep. by XXIII of 1871.*
	XXXII	*Import and Export of Sugar* .	*Rep. by XIX of 1854.*
1837	I	*Justices of the Peace, Calcutta* .	*Rep. by VIII of 1868.*
	II	*Bhor Ghát Tolls, Bombay* .	*Rep. by VIII of 1851.*
	III	*Transfer of Suits, Bengal* .	*Rep. by XVI of 1874.*
	IV	Property in Land . .	Rep. in part by XVI of 1874. Printed at p. 4.
	V	*Native Emigrants* . .	*Rep. by XIV of 1839.*
	VI	Málguzárs, Katak .	Rep. in part by XIV of 1870; XVI of 1874. Printed at p. 4.

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1837	VII	*Charter Courts: Pardons*	*Rep. by V of 1871.*
	VIII	*Anjengo and Changancherry, Madras.*	*Rep. by III of 1838.*
	IX	*Succession to Pársis' Immoveable Property.*	*Rep. by VIII of 1868.*
	X	*Claims to Lands, Straits Settlements.*	*Not in force in British India.*
	XI	*Repealing Bom. Reg. I, 1820, in part.*	*Rep. by VIII of 1868.*
	XII	*Incombustible Roofs, Calcutta*	*Rep. by XIV of 1856.*
	XIII	*Courts-martial*	*Rep. by VIII of 1868.*
	XIV	*Foreign Bottoms*	*Rep. by VIII of 1868.*
	XV	*Chaukidári Assessment*	*Rep. by XX of 1856.*
	XVI	*Customs*	*Rep. by XII of 1873.*
	XVII	*Post-office*	*Rep. by XVII of 1854.*
	XVIII	*Thugs*	*Rep. by XVII of 1862.*
	XIX	*Competence of Witnesses*	*Rep. by VIII of 1868.*
	XX	*Immoveable Property, Straits Settlements.*	*Not in force in British India.*
	XXI	*Office Oaths and Declarations*	*Rep. by X of 1873.*
	XXII	*Revenue-offences, Madras Collectorate.*	*Rep. by XVI of 1874.*
	XXIII	*Principal Sadr Amins, Madras*	*Rep. by XVII of 1862.*
	XXIV	*Police, Bengal*	*Rep. by VIII of 1868.*
	XXV	*Judiciary System, Bengal*	*Rep. by XII of 1873.*
	XXVI	*Governor-General*	*Rep. by VIII of 1868.*
	XXVII	*Salt-duties, Bombay*	*Rep. by Bom. Act VII of 1873.*
	XXVIII	*Repeals Bengal Regulation X, 1829, in part*	*Rep. by VIII of 1868.*
	XXIX	*Language of Judicial and Revenue Proceedings*	*Rep. by XVI of 1874.*
	XXX	*Police Amins, Madras*	*Rep. by XVII of 1862.*
	XXXI	*Coinage*	*Rep. by XIII of 1862.*
	XXXII	*Emigration*	*Rep. by XIV of 1839.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1837	XXXIII	*Heads of District Police, Madras.*	*Rep. by XVII of 1862.*
	XXXIV	*Judiciary System, Madras* .	*Rep. by VIII of 1868.*
	XXXV	*Decrees, Madras.* .	*Rep. by X of 1861.*
	XXXVI	Criminal Jurisdiction, Madras	Rep. in part by XIV of 1870; XVI of 1874. Printed at p. 5.
	XXXVII	*Political Offences, Bombay* . .	*Rep. by XVII of 1862.*
	XXXVIII	*Local Agent, Bengal Regulation XIX, 1810.*	*Rep. by VIII of 1868.*
1838	I	*Customs, Bombay*	*Rep. by I of 1852.*
	II	*Salt, N.-W. P.*	*Rep. by XIV of 1843.*
	III	*Joint Criminal Judge, Cochin* .	*Rep. by XVII of 1862.*
	IV	*Perjury, Sadr Diwani Adálat, Bombay.*	*Rep. by VIII of 1868.*
	V	Bengal Bonded Werehouse	Rep. in part by V of 1854; XII of 1891. Not reprinted.
	VI	*Enquiries into charges against Public Servants, Bombay.*	*Rep. by XXXVII of 1850.*
	VII	*Zila Judges, Bengal* . . .	*Rep. by XVI of 1874.*
	VIII	*Bhor Ghát Tolls*	*Rep. by VIII of 1851.*
	IX	*Fines, Bombay*	*Rep. by XVII of 1862.*
	X	*Kumaon*	*Rep. by XV of 1874.*
	XI	Remuneration of Amins effecting Partitions, Bengal and North-Western Provinces.	Rep. in part by XIV of 1870. Rep. (N.-W. P.) by XIX of 1863. Rep. (Bengal) by Ben. Act VIII of 1876. Rep. (Assam) by Reg. I of 1886. Not reprinted.
	XII	*Hidden Treasure, Madras* .	*Rep. by VI of 1878.*
	XIII	*Power to extend Bengal Regulation XII of 1833.*	*Rep. by I of 1846.*
	XIV	*Gánja and Bhang, Madras* .	*Rep. by VIII of 1868.*
	XV	*Repeal of Bombay Regulation XII, 1827, in part.*	*Rep. by VIII of 1868.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1838	XVI	Suits, Bombay . . .	Rep. in part by XIV of 1870; XVI of 1874; X of 1876; Bom. Act II of 1866; Bom. Act III of 1876. Printed at p. 5.
	XVII	*Appeals from Munsifs, Madras* .	*Rep. by X of 1891.*
	XVIII	Sureties, Bombay . .	Rep. in part by XVI of 1874. Residue rep. (locally by Bom. Act V of 1879). Not reprinted.
	XIX	Coasting Vessels, Bombay	Rep. in part by XIV of 1870; XVI of 1874; XII of 1876. Printed at p. 6.
	XX	*Post-office*	*Rep. by XVII of 1864.*
	XXI	*Silver Coinage*	*Rep. by XIII of 1862.*
	XXII	*Appeals from Munsifs, Bengal* .	*Rep. by XVI of 1874.*
	XXIII	*Repeal of Madras Regulation IV, 1821, in part.*	*Rep. by XXIII of 1871.*
	XXIV	*Bank of Bengal* . . .	*Rep. by VIII of 1868.*
	XXV	Wills made between 1st February, 1839, and 1st January, 1866.	Rep. (except as to certain wills) by VIII of 1868. Rep. in part by XII of 1891. Printed at p. 9.
	XXVI	*Principal Sadr Amins, Madras.*	*Rep. by XVII of 1862.*
	XXVII	*Judiciary, Bengal* . . .	*Rep. by X of 1861.*
	XXVIII	*Perjury, Supreme Courts*	*Rep. (except as to the Straits) by VIII of 1868. Not in force in British India.*
	XXIX	*Salt, Bengal* . . .	*Rep. by XII of 1876.*
	XXX	*Registry of Deeds, Bengal* .	*Rep. by XVI of 1864.*
	XXXI	*Criminal Law: Supreme Courts.*	*Rep., by X of 1875.*
	XXXII	*Justices of the Peace, Bengal* .	*Rep. by XII of 1873.*
1839	I	*Sale of Distresses, Bengal* .	*Rep. by X of 1859.*
	II	*Fines by Magistrates* . .	*Rep. by XVII of 1862.*
	III	*Revenue Courts and Munsifs* .	*Rep. by VIII of 1868.*
	IV	*Theft of Trees, &c., Straits Settlements.*	*Not in force in British India.*

Year.	Number	Subject or short title.	Repeals, amendments, and references.
1839	V	*Search-warrants, Straits Settlements.*	*Rep. by XIV of 1851.*
	VI	*Bank of Bengal* . . .	*Rep. by IV of 1862.*
	VII	Tahsildárs, Mad as.	Rep. in part by XIV. of 1870; XII. of 1873; XII. of 1891. Amended by XII. of 1891. Printed at p. 16.
	VIII	*Jágir of Chinchni, Bombay* .	*Rep. by XV of 1874.*
	IX	*Pauper Suits, Bengal* . .	*Rep. by XVI of 1874.*
	X	*War against Allied State, Straits Settlements.*	*Not in force in British India.*
	XI	*Appeals to Queen in Council* .	*Rep. by VIII of 1868.*
	XII	*Assessments and Taxes, Straits Settlements.*	*Rep. by IX of 1848.*
	XIII	*Port-dues, Madras* . . .	*Rep. by XII of 1875.*
	XIV	*Emigration*	*Rep. by XIII of 1864.*
	XV	*Importation of Foreign Sugar, Madras.*	*Rep. by XIX of 1854.*
	XVI	*Government Rents, Straits Settlements.*	*Not in force in British India.*
	XVII	*Post-office*	*Rep. by XVII of 1854.*
	XVIII	*Thugs*	*Rep. by XVII of 1862.*
	XIX	*Sentences of Imprisonment, Bombay.*	*Rep. by XVII of 1862.*
	XX	Levy of Haqqs, Bombay	Rep. in part by XVI of 1874. Printed at p. 16.
	XXI	*Petty Offences, Calcutta* . .	*Rep. by XIII of 1856.*
	XXII	*Prisoners' Counsel, &c., Supreme Courts.*	*Rep. by X of 1875.*
	XXIII	*Courts-martial* . . .	*Rep. by XXIX of 1861.*
	XXIV	Ganjam and Vizagapatam	Rep. in part by XIV of 1870; XVI of 1874; XII of 1891; Mad. Act I of 1865. Printed at p. 17.
	XXV	*Powers of Collectors, Bombay.*	*Rep. by VIII of 1868.*
	XXVI	*Public Officers, Bengal* . .	*Rep. by XXXVII of 1850.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1839	XXVII	*Execution of Decrees of Judge of 24-Pergunnahs.*	*Rep. by XII of 1891.*
	XXVIII	*Buildings in Bombay and Colába.*	*Rep. by VI of 1857.*
	XXIX	Dower	Rep. (except as to certain marriages) by VIII of 1868. Rep. in part by XII of 1891. Printed at p. 19.
	XXX	Inheritance	Rep. (except as to certain descents) by VIII of 1868. Rep. in part by XII of 1891. Printed at p. 21.
	XXXI	*Injuries to the Coin* . . .	*Rep. by VIII of 1868.*
	XXXII	Interest	Printed at p. 25.
1840	I	*Faujdári Adálat, Madras* .	*Rep. by XVII of 1862.*
	II	*Courts-martial* . . .	*Rep. by XXIX of 1861.*
	III	*Bank of Bombay* . . .	*Rep. by Bom. Act X of 1863.*
	IV	*Affrays, Bengal* . . .	*Rep. by XVII of 1862.*
	V	*Oaths*	*Rep. by X of 1873.*
	VI	*Bills of Exchange* . . .	*Rep. by XXVI of 1881.*
	VII	*Deputy and Assistant Registrars to Sadr Courts, Bengal.*	*Rep. by VIII of 1868.*
	VIII	Panchávats, Madras . . .	Printed at p. 26.
	IX	*Arbitrations, Damages, Witnesses: Supreme Courts.*	*Rep. by X of 1877.*
	X	*Temple of Jaganath* . . .	*Rep. by XII of 1891.*
	XI	*Criminal Law, Bombay* . .	*Rep. by Bom. Act IV of 1865.*
	XII	*Extending Act XII of 1839, Straits Settlements.*	*Rep. by IX of 1848.*
	XIII	*Factors*	*Rep. by IX of 1872.*
	XIV	*Extending 9 Geo. IV., c. 14* .	*Rep. by IX of 1872.*
	XV	Agents of Foreign Sovereigns, Bombay.	Rep. in part by XVI of 1874. Printed at p. 26.
	XVI	*Transported Convicts* .. .	*Rep. by V of 1871.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1840	XVII	Salt Laws, Madras	Rep. in part by XVI of 1874. Amended by VII of 1852 ; Mad. Act II of 1878. Rep. (locally) by Mad. Act VI of 1871 ; Mad. Act I of 1882. Not reprinted.
	XVIII	*Licenses for Sale of Liquor, Bombay.*	*Rep. by XIII of 1856.*
	XIX	*Appeals by Paupers*	*Rep. by XVI of 1874.*
	XX	*Revenue-sales*	*Rep. by VIII of 1868.*
	XXI	*Suits under Ben. Reg. XLIX. of 1793.*	*Rep. by VIII of 1868.*
	XXII	*Vagrants, Presidency-towns*	*Rep. by XIII of 1856.*
	XXIII	*Execution in Presidency-towns of Mufassal Process.*	*Rep. in part by X of 1877.* *Rep. by X of 1882.*
	XXIV	*Municipal Rates, Calcutta*	*Rep. by XVI of 1847.*
	XXV	*Abkári, Bengal*	*Rep. by XXI of 1856.*
1841	I	*Pattidari Estates, Bengal*	*Rep. by XVI of 1874.*
	II	*Gánja and Bhang, Bombay*	*Rep. by XXXIV of 1857.*
	III	*Petty Offences, Bombay Town*	*Rep. by XIII of 1856.*
	IV	*Public Conveyances, Bombay Town.*	*Rep. by Bom. Act VI of 1863, s. 33.*
	V	*Trials for State Offences*	*Rep. by X of 1872.*
	VI	*Import of Rum, Bengal*	*Rep. by VI of 1863.*
	VII	*Evidence*	*Rep. by XVI of 1874.*
	VIII	*Interpleader*	*Rep. by X of 1877.*
	IX	*Abkari, Bengal*	*Rep. by XXI of 1856.*
	X	Registration of Ships	Rep. in part by XI of 1850. XVI of 1874. Amended by XI of 1850 ; V of 1883, s. 38. VII of 1891. Printed at p. 27.
	XI	*Military Courts of Requests*	*Rep. by VIII of 1887.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1841	XII	Sales of Land for Revenue-arrears.	Rep. in part by I of 1845 : XIV of 1870 ; XVI of 1874. Rep. (N.-W. P.) by XIX of 1873 ; (C. P.) by XVIII of 1881 ; (Assam) by Reg. I of 1886. Printed at p. 38.
	XIII	*Explaining Act XXV of 1836* .	*Rep. by XII of 1873.*
	XIV	*Markets, Bombay Town* . .	*Rep. by XIV of 1850.*
	XV	*Repealing Bengal Regulation IX, 1819, s. 7.*	*Rep. by VIII of 1868.*
	XVI	*Oaths of Justices of the Peace* .	*Rep. by II of 1869.*
	XVII	*Appeals, Bengal* . . .	*Rep. by XII of 1873.*
	XVIII	*Export of Military Stores* .	*Rep. by XI of 1878.*
	XIX	Curators in cases of Successions.	Rep. in part by VIII of 1855, s. 13; XVI of 1874 ; XII of 1876. Printed at p. 38.
	XX	*Collection of Debts on Successions.*	*Rep. by XXVII of 1860.*
	XXI	*Local Nuisances.* . . .	*Rep. by XVII of 1862.*
	XXII	*Municipal Rates, Madras Town.*	*Rep. by XXVI of 1850.*
	XXIII	*Import of Rum, Madras* .	*Rep. by VI of 1863.*
	XXIV	Illusory Appointments ; Infants' Property.	Rep. in part by XXVII of 1866 ; VIII of 1868 ; XVI of 1874. XII. of 1891. Printed at p. 43.
	XXV	*Contempts in Equity.* . .	*Rep. by VIII of 1868.*
	XXVI	*Extending 3 & 4 Wm. IV., c. 42.*	*Rep. by X of 1877.*
	XXVII	Unclaimed Dividends on Insolvents' Estates.	Rep. in part by VIII of 1868 XVI of 1874. Printed at p. 46.
	XXVIII	*Extending Act XXIII. of 1839 to Camp-followers.*	*Rep. by XXIX of 1861.*
	XXIX	*Dismissal of Suits and Appeals, Bengal and Madras.*	*Rep. by XII of 1873.*
	XXX	*Obstructions to Justice.* . .	*Rep. by VIII of 1868.*
	XXXI	*Criminal Appeals, Bengal.* .	*Rep. by XVII of 1862.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1842	I	*Sale of Opium, Calcutta.*	*Rep. by XI of 1849.*
	II	*Governor-General.*	*Rep. by VIII of 1868.*
	III	*Extending Act XXI of 1839.*	*Rep. by XIII of 1856.*
	IV	Boat Regulations, Madras Roads.	Rep. in part. by XVI of 1874: Mad. Act II of 1873. Amended, by Mad. Act IV of 1869; Mad. Act I of 1877. Printed at p. 47.
	V	*Sale of Spirits, Bombay Town*	*Rep. by Bom. Act IX of 1867.*
	VI	*Nipáni Jágir*	*Rep. by XV of 1874.*
	VII	*Repealing Ben. Regs. XIX, 1797, s. 5, and IV, 1803.*	*Rep. by VIII of 1868.*
	VIII	*Sadr Courts.*	*Rep. by XVII of 1862.*
	IX	*Extending 4 & 5 Vict., c. 21.*	*Rep. by XII of 1891.*
	X	*Municipalities, Bengal.*	*Rep. by XXVI of 1850.*
	XI	*Foreign Sugar.*	*Rep. by XIX of 1854.*
	XII	*Military Bazars.*	*Rep. by VIII of 1887.*
	XIII	Revenue, Bombay	Rep. in part. by XVI of 1874. Residue rep. (locally) by Bom. Act V of 1879. Not reprinted.
	XIV	*Nuisances, Bombay Town.*	*Rep. by XIV of 1856.*
	XV	*Emigration.*	*Rep. by XIII of 1864.*
	XVI	*Leases, Bengal.*	*Rep. by VIII of 1868.*
	XVII	Revenue Commissioners, Bombay.	Rep. in part by XIV of 1870. Residue rep. (locally) by Bom. Act V of 1879. Not reprinted.
	XVIII	*Revenue, Bombay.*	*Rep. by XVII of 1862.*
1843	I	*Registration of Instruments.*	*Rep. by XVI of 1864.*
	II	*Appeals to Sadr Diwáni Adálat, Bengal.*	*Rep. by XVI of 1874.*
	III	*Special Appeals.*	*Rep. by XVI of 1853.*
	IV	*Appeals from Convictions.*	*Rep. by XVII of 1862.*
	V	Slavery	Rep. in part by XVI of 1874. Printed at p. 57.

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1843	VI	*Amins and Munsifs, Bengal*	*Rep. by XII of 1873.*
	VII	*Courts, Madras*	*Rep. by XII of 1873.*
	VIII	*Provincial Courts of Appeal, Madras.*	*Rep. by VIII of 1868*
	IX	*Bank of Madras*	*Rep. by Mad. Act V of 1862.*
	X	*Karnul and Banganapalle*	*Rep. by XXIII of 1858.*
	XI	*Hereditary Officers, Bombay*	*Rep. by Bom. Act III of 1874.*
	XII	*Judicial Language*	*Rep. by XVI of 1874.*
	XIII	*Conduct of Public Officers, Madras.*	*Rep. by XXXVII of 1850.*
	XIV	*Inland Customs, N.-W. Provinces.*	*Rep. by VIII of 1875.*
	XV	*Deputy Magistrates, Deputy Collectors.*	*Rep. by XII of 1873.*
	XVI	*Repeal, in part, of Ben. Regs. IX of 1808 and XVI of 1810.*	*Rep. by VIII of 1868.*
	XVII	*Official Trustee*	*Rep. (except as to trusts vested under it) by XVII of 1864.*
	XVIII	*Thugs and Dacoits*	*Rep. by VIII of 1863.*
	XIX	*Registration of certain Deeds*	*Rep. by XVI of 1864.*
	XX	*Governor-General*	*Rep. by VIII of 1868.*
	XXI	*Emigration*	*Rep. by XIII of 1864.*
	XXII	*Repeal, in part, of Ben. Reg. III of 1793.*	*Rep. by VIII of 1868.*
	XXIII	*Zila Courts in Ceded Provinces.*	*Rep. by VIII of 1868.*
	XXIV	*Dacoity*	*Rep. by XVII of 1862.*
	XXV	*Applying 5 & 6 Vic., c. 47, s. 11.*	*Rep. by XII of 1873.*
1844	I	*Nawab of Carnatic*	*Rep. by VIII of 1868.*
	II	*Appeals to Queen in Council*	*Rep. by VI of 1874.*
	III	*Corporal Punishment*	*Rep. by XVII of 1862.*
	IV	*Repeal of Ben. Reg. IX of 1808.*	*Rep. by VIII of 1868.*
	V	*Private Lotteries*	*Rep. by XXVII of 1870.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1844	VI	Transit and other duties: Salt (Madras).	Rep. in part by VI of 1863; VIII of 1863; XI of 1869; XXIV of 1869; XIII of 1871; XVI of 1874; XVIII of 1877; XII of 1891. Printed at p. 58.
	VII	*Competence of Witnesses*	*Rep. by VIII of 1868.*
	VIII	*Native Military Convicts*	*Rep. by VII of 1850.*
	IX	*Principal Sadr Amins and Sadr Amins.*	*Rep. by XII of 1873.*
	X	*Sentences for Murder*	*Rep. by VIII of 1868.*
	XI	*Supreme Court, Fort William*	*Rep. by XIV of 1870.*
	XII	*Indian Navy*	*Rep. by VIII of 1868.*
	XIII	*Trisuli Pice*	*Rep. by VIII of 1868.*
	XIV	*Transportation for Life*	*Rep. by XVII of 1862.*
	XV	*Customs-duties*	*Rep. by IX of 1845, s. 3.*
	XVI	*Salt-duties, Bombay*	*Rep. by XII of 1876.*
	XVII	*Colába*	*Rep. by VIII of 1853.*
	XVIII	*Jails, Bengal*	*Rep. by XXVI of 1870.*
	XIX	Town-duties, Bombay	Printed at p. 60.
	XX	*Factors*	*Rep. by IX of 1872.*
	XXI	*Emigration*	*Rep. by XIII of 1864.*
	XXII	*Copper Coinage*	*Rep. by XIII of 1862.*
1845	I	Sales of Land for Revenue-arrears, Bengal.	Rep. (Bengal) by XI of 1859; (N.-W. P.) by XIX of 1873; (Punjab) by XII of 1873. Not reprinted.
	II	*Adultery, Bombay*	*Rep. by XVII of 1862.*
	III	*Security for costs in Appeals, Bengal.*	*Rep. by XII of 1873.*
	IV	*Registration of Deeds*	*Rep. by XVI of 1864.*
	V	*Native Law Officers*	*Rep. by XI of 1864.*
	VI	*Commissions of the Peace*	*Rep. by II of 1869.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1845	VII	*Canals, N.-W. Provinces* . .	*Rep. by VIII of 1873.*
	VIII	*Security for Costs in Appeals, Bombay.*	*Rep. by XVI of 1874.*
	IX	*Import-duties*	*Rep. by VIII of 1868.*
	X	*Warrants on Failure to serve Summons.*	*Rep. by XVII of 1862.*
	XI	*Municipal Funds, Bombay Town.*	*Rep. by XXV of 1858.*
	XII	*Assistant Registrar, Sadr Diwáni and Sadr Faujdári Adálat, Bombay.*	*Rep. by VIII of 1868.*
	XIII	*Attorneys, Supreme Court, Bombay.*	*Rep. by VIII of 1868.*
	XIV	*Nazirs in Munsifs' Courts, Bengal.*	*Rep. by XII of 1873.*
	XV	*Native Soldiers*	*Rep. by X of 1872.*
	XVI	*Re-admission of Appeals, Bengal and Madras.*	*Rep. by XII of 1873.*
	XVII	*Witnesses in Munsifs' Courts, Bengal.*	*Rep. by XII of 1873.*
	XVIII	*Offences by Convicts* . . .	*Rep. by XVII of 1862.*
	XIX	*Assam Company* . . .	*Rep. by XII of 1873.*
	XX	*Native Army, Articles of War* .	*Rep. by XIX of 1847.*
	XXI	*Meriah Sacrifices* . . .	*Rep. by XVI of 1874.*
	XXII	*Governor-General* . . .	*Rep. by VIII of 1868.*
	XXIII	*Union Bank*	*Rep. by VIII of 1868.*
	XXIV	*Pilot Court, Bengal* . . .	*Rep. by XII of 1859.*
	XXV	*Emigrant Ships, Madras* . .	*Rep. by XIII of 1864.*
	XXVI	*Spirit Licenses, Calcutta* . .	*Rep. by XI of 1849.*
	XXVII	*Assistant Magistrates, Bengal* .	*Rep. by XVII of 1862.*
	XXVIII	*Supreme Court, Madras* . .	*Rep. by VIII of 1868.*
	XXIX	*Joint Zila and Sessions Judges.*	*Rep. by X of 1872.*
	XXX	*Fines in Compensation, Madras* .	*Rep. by XVII of 1862.*
	XXXI	*Pensions of Soldiers, Bombay* .	*Rep. by VI of 1849.*
	XXXII	*Distillery Licenses, Madras* .	*Rep. by Mad. Act III of 1864.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1846	I	Pleaders	Rep. in part by XVI of 1874 ; XII of 1876 ; XII of 1891. Amended by XX of 1853, s. 4 ; XII of 1891. Rep. (locally), by XX of 1865 ; IX of 1884, s. 9. Printed at p. 61.
	II	*Unscrewed Cotton* . . .	*Rep. by I of 1853.*
	III	Boundary marks, Bombay .	Rep. in part by Bom. Act I of 1865, s. 50 ; XVI of 1874. Residue rep. (locally) by Bom. Act V of 1879. Ss. 1, 5, and 6 extended to Arakan Hill District with modifications Reg. IX of 1874. Superseded by V of 1880. Not reprinted.
	IV	*Execution-sales of Land, Bengal*	*Rep. by XII of 1873.*
	V	*Surat Police*	*Rep. by VIII of 1868.*
	VI	*Bhatti Territory, N.-W. Provinces.*	*Rep. by IV of 1872.*
	VII	*Diet money for Witnesses* . .	*Rep. by XVII of 1862*
	VIII	*Revenue Settlement, N.-W. Provinces.*	*Rep. by XII of 1876.*
	IX	Boats in Harbours, Madras .	Printed at p. 62.
	X	*Distress for Rent, Bengal* .	*Rep. by X of 1859.*
	XI	Khandesh and Ahmadnagar .	Rep. in part by XVI of 1874 ; XII of 1876. Rep. (except as to Scheduled Districts) by XIV of 1874. Printed at p. 63.
1847	I	Boundaries, N.-W. Provinces .	Rep. (N.-W. P.) by XIX of 1873 ; (C. P.) by XVIII of 1881 ; (Ajmere) by Reg. III of 1877. Not reprinted.
	II	*Explaining Act V of 1840* . .	*Rep. by VIII of 1868.*
	III	*Police, Straits Settlements* .	*Rep. by XIII of 1856.*
	IV	*Military Magistrates* . .	*Rep. by VIII of 1868.*
	V	*Execution of sentences of Courts in Native States.*	*Rep. by VIII of 1863.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1847	VI	*Copper Currency, Straits Settlements.*	*Rep. in part by XVII of 1855.* *Not in force in British India.*
	VII	*Distresses, Calcutta* . . .	*Rep. by I of 1875.*
	VIII	*Emigration from Madras Port.*	*Rep. by XIII of 1864.*
	IX	Assessment of new lands .	Rep. in part by XIV of 1870; XVI of 1874; XII of 1891. Rep. in part and amended by Ben. Act IV of 1868. Rep. (Assam) by Reg. I of 1886. Printed at p. 68.
	X	*Sentences to Imprisonment for Life.*	*Rep. by XVII of 1862.*
	XI	*Convicts from Hong-kong* .	*Rep. by VIII of 1868.*
	XII	*Fines on Munsifs and Sadr Amins.*	*Rep. by VIII of 1868.*
	XIII	*Emigration to Ceylon* . .	*Rep. by XIII of 1864.*
	XIV	*Transcription of plaints, Bengal.*	*Rep. by VIII of 1868.*
	XV	*Survey of Lands in Calcutta* .	*Rep. by VIII of 1868.*
	XVI	*Commissioners for Improvement of Calcutta.*	*Rep. by X of 1852.*
	XVII	*Defects in Civil Procedure* .	*Rep. by XII of 1873.*
	XVIII	*Registration of Deeds, Bengal.*	*Rep. by XVI of 1864.*
	XIX	*Articles of War, Native Army*	*Rep. by XXIX of 1861.*
	XX	Copyright . . .	Rep. in part by XVII of 1862; XIV of 1870; IX of 1871; XVI of 1874; XII of 1876; I of 1879. Printed at p. 70.
	XXI	*Supreme Court, Bombay* . .	*Rep. by VIII of 1868.*
	XXII	*Municipal Commissioners, Calcutta.*	*Rep. by XIV of 1856.*
	XXIII	*Transportation*	*Rep. by VIII of 1868.*
1848	I	*Forgery, Bengal* . . .	*Rep. by XVII of 1862.*
	II	*Municipal Commissioners, Calcutta.*	*Rep. by XII of 1852.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1848	III	*Meaning of "Thug" and "Thuggee."*	*Rep. by XVII of 1862.*
	IV	*Coroners' Juries*	*Rep. by IV of 1871.*
	V	*Penal Recognizances*	*Rep. by XVII of 1862.*
	VI	*Foreign Bottoms*	*Rep. by VIII of 1868.*
	VII	*Amending Act VI of 1848*	*Rep. by XII of 1873.*
	VIII	*Amending Ben. Reg. V of 1812.*	*Rep. by X of 1859.*
	IX	*Municipal Rates, Straits Settlements.*	*Rep. by XXVII of 1856.*
	X	*Mandvi, Bombay*	*Rep. by XII of 1891.*
	XI	*Wandering Gangs of Thieves*	*Rep. by XVII of 1862.*
	XII	*Commissioners for Recovery of Small Debts, Calcutta.*	*Rep. by VIII of 1868.*
	XIII	*Limitation, Bengal*	*Rep by VIII of 1868.*
	XIV	*Commissions to take Affidavits, Supreme Court, Calcutta.*	*Rep. by X of 1877.*
	XV	Officers of Supreme Courts.	Rep. in part by XII of 1876. Printed at p. 76.
	XVI	*Salt, N.-W. Provinces*	*Rep. by XIV of 1870.*
	XVII	*Stamp-duties, Madras*	*Rep. by VII of 1870.*
	XVIII	Nawáb of Surát	Rep. in part by XIV of 1870. XII of 1891. Not reprinted.
	XIX	*Criminal Sentences, Bengal and Madras.*	*Rep. by XVII of 1862.*
	XX	Attendance before Collectors, Bengal.	Rep. (Assam) by Reg. I of 1886. Printed at p. 77.
	XXI	*Wagers*	*Rep. by IX of 1872.*
	XXII	*Indictments for Forgery*	*Rep. by VIII of 1868.*
	XXIII	*Amending Act XXV of 1840*	*Rep. by XXI of 1856.*
	XXIV	*Governor-General*	*Rep. by VIII of 1868.*
	XXV	*Banganapalle, Madras*	*Rep. by VIII of 1868.*
	XXVI	*Coroners' Juries, Straits Settlements.*	*Not in force in British India.*
	XXVII	*Indian Navy*	*Rep. by VIII of 1868.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1849	I	*Offences in Foreign States* . .	*Rep. by XI of 1872.*
	II	*Branding Convicts* . . .	*Rep. by VIII of 1868.*
	III	*Union Bank, Calcutta* . .	*Rep. by VIII of 1868.*
	IV	*Criminal Lunatics* . . .	*Rep. by X of 1875.*
	V	*Customs-duties, Straits Settlements.*	*Rep. by VIII of 1868.*
	VI	*Pensions*	*Rep. by XXIII of 1871.*
	VII	*Administrator-General* .	*Rep. (except as to letters of administration granted before 1st March, 1855) by VIII of 1855, s. 56.*
	VIII	*Police Magistrates, Madras Town.*	*Rep. by XIII of 1856.*
	IX	*Police Magistrates, Madras* .	*Rep. by XVI of 1874.*
	X	Commissioner of Revenue, Madras.	Printed at p. 78.
	XI	*Abkari, Calcutta* . . .	*Rep. by Ben. Act VII of 1878.*
	XII	*Sadr Adalat, Bombay* . .	*Rep. by VIII of 1868.*
	XIII	*Smuggling of Salt, Calcutta* .	*Rep. by XII of 1873.*
	XIV	*Tampering with Army or Navy* .	*Rep. by XVII of 1862.*
	XV	*Repealing Bom. Reg. XVIII, 1827, s. 6, cl. 1.*	*Rep. by VIII of 1868.*
1850	I	*Title to certain Lands, Calcutta.*	*Rep. by VI of 1857.*
	II	*Extending Act VII of 1849 to Madras and Bombay* .	*Rep. (except as to letters of administration granted before 1st March, 1855) by VIII of 1855, s. 56.*
	III	*Sadr Amins and District Munsifs, Madras.*	*Rep. by X of 1861.*
	IV	*Appeals to Sadr Court, Bengal.*	*Rep. by XV of 1853.*
	V	Coasting Trade . . .	Printed at p. 79.
	VI	*Military Offences* . . .	*Rep. by XXIX of 1861.*
	VII	*Removal of Prisoners* . .	*Rep. by XVII of 1862.*
	VIII	*Appeals*	*Rep. by XII of 1873.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1850	IX	*Small Cause Courts, Presidency-towns.*	*Rep. by XV of 1882.*
	X	*Aden*	*Rep. by XII of 1873.*
	XI	Amending Act X of 1841 (Registration of Ships).	Rep. in part by XIV of 1870. Printed at p. 80.
	XII	Public Accountants .	Rep. in part by XIV of 1870. Rep. in part (locally) by Bom. Act V of 1879. Rep. (Assam) by Reg. I of 1886. Printed at p. 81.
	XIII	*Breaches of Trust* . . .	*Rep. by XVII of 1862.*
	XIV	*Police Magistrates, Straits Settlements.*	*Rep. by XIII of 1856.*
	XV	*Munsifs' Courts, Bengal* . .	*Rep. by XII of 1873.*
	XVI	*Fines*	*Rep. by XVII of 1862.*
	XVII	*Taking Land in Bombay and Colaba.*	*Rep. by VI of 1857.*
	XVIII	Protection of Judicial Officers .	Printed at p. 83.
	XIX	Binding Apprentices . .	Rep. in part by XIV of 1870; XVI of 1874. Printed at p. 84.
	XX	Tributary Mahâls, Katak .	Printed at p. 90.
	XXI	Non-forfeiture of Rights by Loss of Caste.	Printed at p. 91.
	XXII	*Governor-General* . . .	*Rep. by VIII of 1868.*
	XXIII	Land-revenue, Calcutta .	Rep. in part and amended by XV of 1882. Printed at p. 92.
	XXIV	*Duty on Tobacco, Bombay Town.*	*Rep. by IV of 1857.*
	XXV	Forfeiture of Deposits on Land-sales.	Rep. in part by X of 1861 XIV of 1870. XII of 1891. Printed at p. 94.
	XXVI	Improvements in Towns.	Rep. in part by XIV of 1870. Rep. (Bengal) by Ben. Act V of 1876; (Bombay) by Bom. Act VI of 1873; (Sindh) by Bom. Act I of 1879; (N.-W. P) by VI of 1868, s. 5; (Punjab) by IV of 1873. (locally, Madras) by Mad. Act X of 1865. Not reprinted.

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1850	XXVII	*Registry of Merchant Seamen* .	*Rep. by I of 1859.*
	XXVIII	*Merchant Seamen* . . .	*Rep. by I of 1859.*
	XXIX	*Amending Act XXXI of 1838* .	*Rep. by VIII of 1868.*
	XXX	*Pleaders: Appeals* . . .	*Rep. by VIII of 1868.*
	XXXI	*Salt-revenue, Bombay* . .	*Rep. by Bom. Act VII of 1873.*
	XXXII	*Repealing Act XV of 1836* .	*Rep. by VIII of 1868.*
	XXXIII	Sale of Patni Tenures, Bengal	Rep in part by XIV of 1870; XVI of 1874. Printed at p. 95.
	XXXIV	State Prisoners . .	Rep. in part by XII of 1891. Printed at p. 96.
	XXXV	*Ferries, Bombay* . . .	*Rep. by Bom. Act II of 1868.*
	XXXVI	*Amending Articles of War for Native Army.*	*Rep. by XXIX of 1861.*
	XXXVII	Inquiries into Behaviour of Public Servants.	Rep. in part by XIV of 1870; XVI of 1874; XII of 1876; (locally), by XVI of 1868. Printed at p. 97.
	XXXVIII	*Prisoners' Counsel* . . .	*Rep. by XVII of 1862.*
	XXXIX	*Municipal Commissioners, Calcutta.*	*Rep. by VIII of 1868.*
	XL	*Pawnbrokers, Straits Settlements.*	*Rep. by XII of 1870.*
	XLI	*Landing Decrepit Beggars, Straits Settlements.*	*Not in force in British India.*
	XLII	*Public Works, Bengal* . .	*Rep. by VI of 1857.*
	XLIII	*Joint Stock Companies* . .	*Rep. by X of 1866, s. 219.*
	XLIV	Board of Revenue, Bengal.	Rep. in part by XIV of 1870: Rep. (Assam) by Reg. I of 1886 Printed at p. 101.
	XLV	*Coroners*	*Rep. by IV of 1871.*
1851	I	*Fines under Act XXIV. of 1845.*	*Rep. by XII of 1859.*
	II	*Amending Ben. Reg XIII. of 1810.*	*Rep. by VIII of 1868.*
	III	*Salt-smuggling*	*Rep. by VIII of 1868.*
	IV	*Deputy and Assistant Magistrates, Bombay.*	*Rep. by XVII of 1862.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1851	V	*Turton's Insolvency* . . .	*Rep. by VIII of 1868.*
	VI	*Goras Land, Bombay* . . .	*Rep. by XIV of 1870.*
	VII	*Execution of Decrees, Bombay* .	*Rep. by X of 1861.*
	VIII	Tolls on Roads and Bridges	Rep. in part by XIV of 1870; XII. of 1876; and amended by VIII of 1888, s. 5; (locally) by; XV of 1864 Rep. (Bombay) by Bom. Act III of 1875. Extended to Upper Burma with modifications by XX of 1886, ss. 6 & 7. Printed at p. 102.
	IX	*Gambling, Bombay Town* .	*Rep. by XIII of 1856.*
	X	*Administration Certificates* .	*Rep. by XXVII of 1868.*
	XI	*Registration of Deeds, Bengal* .	*Rep. by XVI of 1864.*
	XII	Land-revenue, Madras Town	Rep. in part by Mad. Act VI of 1867; XII. of 1891. Printed at p. 104.
	XIII	*Amending Act V of 1851* . .	*Rep. by VIII of 1868.*
	XIV	*Excise, Straits Settlements* .	*Rep. by XXX of 1866.*
	XV	*Cotton-frauds, Bombay* . .	*Rep. by Bom. Act IX of 1863.*
	XVI	*Receivers of Stolen Goods* . .	*Rep. by XVII of 1862.*
1852	I	*Customs, Bombay* . . .	*Rep. by XIII of 1871.*
	II	*Land-customs, Bombay* . .	*Rep. by XXIX of 1857.*
	III	*Spirituous Liquors, Bombay*	*Rep. in part by XVI of 1874.* *Rep. by Bom. Act V of 1878.*
	IV	*Emigration*	*Rep. by XIII of 1864.*
	V	*Marriage by Registrars* . .	*Rep. by XV of 1872.*
	VI	*Horsburgh Light-house* . .	*Rep. by XIII of 1854.*
	VII	Offences against Salt-laws, Madras.	Rep. in part by XVI of 1874. Rep. (locally) by Mad Act VI of 1871; Mad. Act I of 1882. Not reprinted.
	VIII	Sheriffs' Fees	Printed at p. 107.

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1852	IX	*Repealing Ben. Reg. I of 1832* .	*Rep. by VIII of 1868.*
	X	*Municipal Commissioners, Calcutta.*	*Rep. by XXVIII of 1856.*
	XI	Titles to Rent-free Estates, Bombay.	Rep. in part by XVI of 1874; X of 1876. Application declared by Bom. Act V of 1879, s. 127. Printed at p. 109.
	XII	*Municipal Commissioners, Calcutta.*	*Rep. (except s. 50) by XIV of 1856.* *S. 50 rep. by XXVIII of 1856.*
	XIII	*Calcutta Police*	*Rep. by XIII of 1856.*
	XIV	*Extending certain Acts to Straits Settlements.*	*Rep. in part by XXVII of 1866.* *Not in force in British India.*
	XV	*Evidence*	*Rep. by I of 1872.*
	XVI	*Criminal Procedure, Supreme Courts.*	*Rep. by X of 1875.*
	XVII	*Special Cases, Supreme Courts* .	*Rep. by X of 1877.*
	XVIII	*Pleaders, Lower Provinces* .	*Rep. by XX of 1865.*
	XIX	*Abkari, Madras Town* . .	*Rep. by Mad. Act I of 1886.*
	XX	*Acquisition of Land for Public Purposes, Madras.*	*Rep. by VI of 1857.*
	XXI	Deputy Collectors, Bombay	Rep. in part by XII of 1873; XII of 1876; Bom. Act I of 1868. Residue rep. (locally) by Bom. Act V of 1879. Not reprinted.
	XXII	*Summary Suits for Arrears of Rent.*	*Rep. by VIII of 1868.*
	XXIII	*Fines, Madras and Bombay* .	*Rep. by XVI of 1874.*
	XXIV	*Crimping*	*Rep. by XIII of 1864.*
	XXV	*Execution of Decrees on Appeal.*	*Rep. by VI of 1874.*
	XXVI	*Sadr Amins and Munsifs* .	*Rep. by XII of 1873.*
	XXVII	*Heads of Villages, Bombay* .	*Rep. by Bom. Act VIII of 1867.*
	XXVIII	*Police, Bombay*	*Rep. by VIII of 1868.*
	XXIX	*Circuits of Judicial Commissioners, Bombay.*	*Rep. by XII of 1873.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1852	XXX	Naturalization of Aliens	Rep. in part by XVI of 1874. XII of 1876. Printed at p. 117.
	XXXI	*Repealing Ben. Reg. XX of 1817, s. 16, cl. 17.*	*Rep. by VIII of 1868.*
	XXXII	*Prosecution of certain officers*	*Rep. by XVII of 1862.*
	XXXIII	*Enforcement of Judgments*	*Rep. in part by VII of 1870. X of 1877. Residue rep. by VIII of 1887.*
	XXXIV	*Gambling. Straits Settlements.*	*Rep. by XIII of 1856.*
	XXXV	*Local Taxation, Akyab and Kyook Phyoo.*	*Rep. by II of 1876.*
1853	I	*Corporal Punishment, Madras and Bombay.*	*Rep. by XVII of 1862.*
	II	Public Charges on Landholders.	Printed at p. 120.
	III	*Great Indian Peninsula Railway.*	*Rep. by XVIII of 1854, s. 39.*
	IV	*Tobacco Monopoly, Madras*	*Rep. by VIII of 1868.*
	V	*Amending Act IV of 1839, Straits Settlements.*	*Not in force in British India.*
	VI	Summary Suits for Arrears of Rent, &c.	Rep. in part by XII of 1873; Ben. Act VIII of 1865. XII of 1891. Printed at p. 121.
	VII	*Jurisdiction of Magistrates*	*Rep. by X of 1872.*
	VIII	*Colaba*	*Rep. by XII of 1891.*
	IX	*Amending Act VI of 1853*	*Rep. by VIII of 1868.*
	X	*Amending Act XXII of 1836*	*Rep. by XII of 1873.*
	XI	Bombay and Colaba Shore-nuisances.	Rep. in part by XXII of 1855; XIV of 1870. Printed at p. 123.
	XII	*Great Indian Peninsula Railway.*	*Rep. by XVIII of 1854, s. 39.*
	XIII	*Vishalghur*	*Rep. by XV of 1874.*
	XIV	*Indian Navy*	*Rep. by VIII of 1868.*
	XV	*Regular Appeals, Bengal*	*Rep. by XII of 1873.*
	XVI	*Special Appeals*	*Rep. by XII of 1873.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1853	XVII	*Imrit Rao's Jagir* . . .	*Rep. by XV of 1874.*
	XVIII	*Sale of Spirits in Cantonments.*	*Rep. by XII of 1891.*
	XIX	Evidence, Bengal . .	Rep. in part by X of 1855, X of 1861, I of 1872, (Oudh) by XVIII of 1876. S. 26: printed at p. 125.
	XX	Pleaders	Rep. in part by XIV of 1870; XII of 1891. Rep. (locally) by XX of 1865; IX of 1884, s. 9. Printed at p. 126.
	XXI	*Governor-General* . . .	*Rep. by VIII of 1868.*
1854	I	*Acquisition of Land, Madras Town.*	*Rep. by VI of 1857.*
	II	*Assessor to Court of Petty Sessions, Bombay Town.*	*Rep. by VIII of 1868.*
	III	*Amending Native Articles of War.*	*Rep. by XXIX of 1861.*
	IV	*Cantonment Bazars, Bombay* .	*Rep. by XIII of 1889.*
	V	Bengal Bonded Warehouse Association.	Rep. in part by XIV of 1870. Not reprinted.
	VI	*Supreme Courts, Equity Procedure.*	*Rep. by VIII of 1868.*
	VII	*Fugitive Foreign Offenders* .	*Rep. by XI of 1872.*
	VIII	*Certificates of Administration* .	*Rep. by XXVII of 1860.*
	IX	*Civil Appeals*	*Rep. by XII of 1873.*
	X	*Assistant and Deputy Magistrates.*	*Rep. by X of 1872.*
	XI	*Copper Coinage* . . .	*Rep. by XIII of 1862.*
	XII	*District Munsifs, Madras* .	*Rep. by XVII of 1862.*
	XIII	*Lighthouses, Straits Settlements.*	*Rep. in part by XIV of 1870. Not in force in British India.*
	XIV	*Assam Tea Company* . . .	*Rep. by IV of 1855, s. 14.*
	XV	*Borneo Commission* . . .	*Rep. by VIII of 1868.*
	XVI	Police, N.-W. Provinces .	Rep. in part by XIV of 1870. Printed at p. 127.
	XVII	*Post-office*	*Rep. by XIV of 1866.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1854	XVIII	*Railways*	*Rep. by IV of 1879.*
	XIX	*Foreign Sugar*	*Rep. by VIII of 1868.*
	XX	Agent to Governor-General, Rámgarh, Jungal Maháls, and Midnapur.	Printed at p. 127.
	XXI	*Banks of Bengal, Madras, and Bombay.*	*Rep. as to Bank of Bengal by IV of 1862; as to Bank of Madras by Mad. Act V of 1862; as to Bank of Bombay by Bom. Act X of 1863.*
	XXII	*British Subjects* . . .	*Rep. by VIII of 1868.*
	XXIII	*Outrages in Malabar* . .	*Rep. by XX of 1859.*
	XXIV	War-knives, Malabar . .	Rep. in part by XIV. of 1870. Printed at p. 128.
	XXV	*Mufussal Treasury Warrants*	*Rep. by VIII of 1868.*
	XXVI	Court of Wards, Bengal .	Rep. (N.-W. P.) by XIX of 1873; (Bengal) by Ben. Act IV of 1870, s. 86. Printed at p. 129.
	XXVII	*Názim of Bengal* . . .	*Rep. by III of 1883.*
	XXVIII	*Municipal Commissioners, Calcutta.*	*Rep. by XXVIII of 1856.*
	XXIX	*Exportation of Saltpetre* . .	*Rep. by VIII of 1868.*
	XXX	*Customs-duties, Burma* . .	*Rep. by XX of 1886.*
	XXXI	Real Actions: Conveyances of Land.	Rep. in part by XIV of 1870; XVI of 1874; XII of 1876. (locally) by IV of 1882. Printed at p. 131.
	XXXII	*Torture, Madras* . . .	*Rep. by VIII of 1868.*
	XXXIII	*Language of Judicial Decisions.*	*Rep. by XVI of 1874.*
	XXXIV	*Electric Telegraphs* . . .	*Rep. by I of 1876.*
1855	I	*Governor-General* . . .	*Rep. by VIII of 1868.*
	II	*Evidence*	*Rep. by I of 1872.*
	III	*Indian Navy*	*Rep. by VIII of 1868.*
	IV	*Assam Company* . . .	*Rep. by XI of 1866.*
	V	*Execution, Supreme Courts*	*Rep. (except as to Straits Settlements) by VIII of 1868.* *Not in force in British India.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1855	VI	*Execution, Supreme Courts*	*Rep. by X of 1877.*
	VII	*Arrest on Mesne Process, Supreme Courts.*	*Rep. (except as to Straits Settlements) by VIII of 1868.* *Not in force in British India.*
	VIII	*Administrator-General*	*Rep. by XXIV of 1867.*
	IX	*Regular Appeals, Madras*	*Rep by X of 1861.*
	X	Witnesses, Madras and Bombay.	Rep. in part by X of 1861; XII of 1873; XII of 1891. Printed at p. 134.
	XI	Mesne Profits and Improvements.	Rep. in part (locally) by IV of 1883. Printed at p. 135.
	XII	Suits for Wrongs by and against Executors and Administrators.	Rep. in part by IX of 1871. Printed at p. 136.
	XIII	Compensation for Loss occasioned by Death.	Rep. in part by IX of 1871. Printed at p. 138.
	XIV	*Military Bazars, Madras*	*Rep. by XVI of 1874.*
	XV	*Joint Police-officers, Bombay*	*Rep. by XVII of 1862.*
	XVI	*Use of Badges, Bombay*	*Rep. by XVII of 1862.*
	XVII	*Copper Currency, Straits Settlements.*	*Not in force in British India.*
	XVIII	*Pardons and Reprieves*	*Rep. by XVI of 1874.*
	XIX	*District Munsifs, Madras*	*Rep. by VIII of 1868.*
	XX	*Boundary-marks, Madras*	*Rep. by XXVIII of 1860.*
	XXI	Court of Wards, Madras	Printed at p. 140.
	XXII	*Ports and Port-dues*	*Rep. by XII of 1875.*
	XXIII	Administration of Mortgaged Estates.	Rep. in part by XVI of 1874; (except as to descents or devises before 1866) by VIII of 1868. Printed at p. 142.
	XXIV	Penal Servitude	Rep. in part by XII of 1867; XIV of 1870; V of 1871; XVI of 1874; XII of 1876; XII of 1891. Printed at p. 143.
	XXV	*Sessions at Ootakamund*	*Rep. by VIII of 1868.*
	XXVI	*Government Savings Banks*	*Rep. by V of 1873.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1855	XXVII	*Banks of Bengal, Madras, and Bombay.*	*Rep. as to Bank of Bengal by IV of 1862;* *as to Bank of Madras by Mad. Act V of 1862;* *as to Bank of Bombay by Bom. Act X of 1863.*
	XXVIII	Repeal of Usury Laws . .	Rep. in part by XIV of 1870. Printed at p. 146.
	XXIX	*Amending Act VI of 1844* .	*Rep. by XII of 1873.*
	XXX	*Repealing Act XXVIII of 1839, s. 7.*	*Rep. by VIII of 1868.*
	XXXI	*Emigration to St. Lucia and Grenada.*	*Rep. by XIII of 1864.*
	XXXII	Embankments, Bengal . .	Rep. in part by XIV of 1870; XVI of 1874. Rep. (locally) by Ben. Act VI of 1873. Printed at p. 147.
	XXXIII	*Exportation of Saltpetre* . .	*Rep. by VIII of 1868.*
	XXXIV	*Execution of Judgments* . .	*Rep. by X of 1877.*
	XXXV	*Import of Cotton, N.-W. Provinces.*	*Rep. by VIII of 1868.*
	XXXVI	*Contraband Salt, N.-W. Provinces.*	*Rep. by VIII of 1875.*
	XXXVII	Santál Districts . . .	Rep. in part by XIV of 1870; XII of 1891. Rep. by XIV of 1874 (when notified). Amended by X of 1857. Printed at p. 156.
	XXXVIII	*Rebellion in Beerbhoom, &c.* .	*Rep. by VIII of 1868.*
1856	I	*Obscene Books and Pictures* .	*Rep. by XVII of 1862.*
	II	*Offences affecting the Public* .	*Rep. by XVII of 1862.*
	III	*Abkari: Calcutta; Madras Town.*	*Rep. (Calcutta) by Ben. Act II of 1876;* *(Madras) by Mad. Act I of 1886.*
	IV	*Cattle-killing*	*Rep. by XVII of 1862.*
	V	*Extending Act XXIII of 1854* .	*Rep. by XX of 1859.*
	VI	*Patents*	*Rep. by IX of 1857 (but save as to acts done under it—see Act XV of 1859, s. 36).*
	VII	*Water-supply, Bombay Town* .	*Rep. by VIII of 1868.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1856	VIII	Gaols, *Madras and* Bombay	Rep. in part by XIV of 1870; XII of 1876; Rep. (Madras) by Mad. Act V of 1869. Printed at p. 158.
	IX	Bills of Lading	Printed at p. 159.
	X	*Native Articles of War* . .	*Rep. by XXIX of 1861.*
	XI	European Deserters .. .	Rep. in part by XIV of 1870; XII of 1873; XVI of 1874. Printed at p. 160.
	XII	Civil Court Amins, Bengal .	Rep. in part by X of 1861; XIV of 1870; X of 1873; XII of 1873. Amended by XIX of 1886. Printed at p. 162.
	XIII	Police, Presidency-towns .	Rep. in part by XLVIII of 1860; XIV of 1870; XVI of 1874; XII of 1875; IV of 1877; (Calcutta) by Ben. Act IV of 1866; (Madras) by Mad. Act VIII of 1867; s. 81. Amended in Bombay— by Bom. Act I of 1872; by Bom. Act II of 1879. Printed at p. 164.
	XIV	*Conservancy, Presidency-towns* .	*Rep. by XVI of 1874.*
	XV	Remarriage of Hindu Widows .	Printed at p. 177.
	XVI	*Port-dues*	*Rep. by VIII of 1868.*
	XVII	*Criminal Process* . . .	*Rep. by XVII of 1862.*
	XVIII	Collector of Calcutta . .	Rep. in part by XVIII of 1869. Printed at p. 179.
	XIX	*Emigration.*	*Rep. by XVI of 1874.*
	XX	Police Chaukidárs, Bengal .	Rep. in part by XIV of 1870; X of 1872. Rep. in part and amended— (except in Bengal) by XXII of 1871; (Oudh) by XVIII of 1876;

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1856	XX	Police Chaukidárs, Bengal—*contd.*	Rep. (N. W. P. and Oudh) by XV of 1883, s. 17. (Punjab) except certain Cantonments) by XX of 1883, s. 69; (Bengal) by Ben. Act V of 1876.* Printed at p. 180.
	XXI	*Abkári Bengal*	*Rep. (except in Ben.) by X of 1871; (Ben.) by Ben. Act VII of 1878.*
	XXII	Tolls, Karatoyá River . .	Rep. in part by XII of 1891. Printed at p. 194.
	XXIII	*Recovery of Revenue-arrears, Madras.*	*Rep. by XXXIX of 1858.*
	XXIV	*Bengal Mariners, &c., Society* .	*Rep. by VIII of 1868.*
	XXV	*Municipal Rates, Presidency-towns.*	*Rep. by XVI of 1874.*
	XXVI	*Municipal Commissioners, Madras Town.*	*Rep. by Mad. Act IX of 1865.*
	XXVII	*Municipal Commissioners, Straits Settlements.*	*Rep. in part by XVII of 1863.* *Not in force in British India.*
	XXVIII	*Municipal Commissioners, Calcutta.*	*Rep. by Ben. Act VI of 1863.*
	XXIX	*Oaths by Registrars of Deeds* .	*Rep. by XVII of 1864.*
1857	I	*Native Passenger Vessels* . .	*Rep. by VII of 1868.*
	II	University, Calcutta . .	Rep. in part by XII of 1876; XII of 1891. Printed at p. 196.
	III	*Cattle Trespass*	*Rep. by I. of 1871.*
	IV	Tobacco, Bombay Town . .	Rep. in part by XIV of 1870; XVI of 1874; XII of 1876. XII of 1891. Printed at p. 201.
	V	Oriental Gas Company . .	Amended by Act XI of 1867. Printed at p. 204.
	VI	*Acquisition of Land for Public Purposes.*	*Rep. by X of 1870.*

* Notwithstanding the total repeal which Ben. Act V. of 1876 purports to effect, Act XX. of 1856 must be deemed to be still in force in Bengal for the purposes of the Cantonments Act. See Act III. of 1880, s. 12, which takes the place of Act XXII. of 1864.

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1857	VII	Uncovenanted Agency, Madras	Rep. in part by XVII of 1862; X of 1873. XII of 1873. Printed at p. 211.
	VIII	*Courts-Martial*	*Rep. by XXIX of 1861.*
	IX	*Repealing Act VI of 1856*	*Rep. by VIII of 1868.*
	X	Santál Districts	Rep. in part by XIV of 1870. Rep. by XIV of 1874 (when notified). Printed at p. 211.
	XI	State Offences	Rep in part by XVII of 1862; XII of 1886. Printed at p. 212.
	XII	*Piratical Junks, Straits Settlements.*	*Not in force in British India.*
	XIII	Opium, Bengal	Rep. in part by XIV of 1870; I of 1878. (C. P.), XX of 1857. XII of 1891. Rep. in part and amended (Oudh) by XVIII of 1876. Printed at p. 214.
	XIV	*Military and State Offences*	*Rep. by VIII of 1868.*
	XV	*Printing Presses*	*Rep. by VIII of 1868.*
	XVI	*Heinous Offences*	*Rep. by VIII of 1868.*
	XVII	*Mutineers and Deserters*	*Rep. by VIII of 1868.*
	XVIII	*Family, &c., of Nawáb of Carnatic.*	*Rep. by VIII of 1868.*
	XIX	Joint-stock Companies	Rep. (except as to Table B, which is unrepealed as to Companies existing on 1st May, 1882—see Act VI of 1882) by X of 1866. Not reprinted.
	XX	*Amending Act IX of 1850*	*Rep. by XV of 1882.*
	XXI	Station of Howrah	Rep. in part by XVI of 1874; XII of 1891. Ben. Act I of 1864; Ben. Act III of 1864; Ben. Act V of 1876; Ben. Act III of 1884; Rep. locally by Ben. Act VIII of 1868; Ben. Act II of 1866; (Oudh) XVIII of 1876. Printed at p. 221.

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1857	XXII	Bombay University	Rep. in part by XII of 1876; XII of 1891. Printed at p. 227.
	XXIII	*Volunteer Corps*	*Rep. by XX of 1869.*
	XXIV	*Port-dues*	*Rep. by VIII of 1868.*
	XXV	Forfeitures for Mutiny	Rep. in part by V of 1869; IX of 1871. Printed at p. 232.
	XXVI	*Ferries, Straits Settlements*	*Not in force in British India.*
	XXVII	Madras University	Rep. in part by XII of 1876. XII of 1891. Printed at p. 234.
	XXVIII	*Arms and Ammunition*	*Rep. by VIII of 1868.*
	XXIX	Land Customs, Bombay	Rep. in part by XXIII of 1859: XI of 1869; XIV of 1870; XIII of 1871; XVI of 1874; XII of 1876. Printed at p. 239.
	XXX	*Port-dues, Calcutta*	*Rep. by XII of 1875.*
	XXXI	*Port-dues, Bombay Port*	*Rep. by XII of 1875.*
	XXXII	*Native Articles of War*	*Rep. by XXIX of 1861.*
	XXXIII	*Foreigners*	*Rep. by VIII of 1868.*
	XXXIV	*Sale of Ganja, Bombay*	*Rep. in part by XIV of 1870. Rep. by Bom. Act V of 1878.*
	XXXV	*Port-dues, Burmese Ports*	*Rep. by XII of 1875.*
1858	I	Compulsory Labour, Madras	Rep. in part by XVI of 1874. Printed at p. 243.
	II	*Cuttack Port-dues*	*Rep. by XII of 1875.*
	III	State Prisoners	Rep. in part by XIV of 1870. XII of 1891. Printed at p. 245.
	IV	*Governor-General*	*Rep. by VIII of 1868.*
	V	*Escaped Convicts*	*Rep. by XVII of 1860.*
	VI	*Impressment of Labour*	*Rep. by VIII of 1868.*
	VII	*Port-dues, Madras*	*Rep. by Mad. Act VII of 1867.*
	VIII	*Karachi Port-dues*	*Rep. by XII of 1875.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1858	IX	*Cambay Gulf Port-dues* . .	*Rep. by Bom. Act XI of 1866.*
	X	*Confiscation, &c., for Rebellion* .	*Rep. by VIII of 1868.*
	XI	*Corporal Punishment*	*Rep. by VIII of 1868.*
	XII	*Roads in Suburbs of Calcutta and Howrah.*	*Rep. by Ben. Act V of 1876.*
	XIII	*Unlawful Possession of Arms* .	*Rep. by VIII of 1868.*
	XIV	*Minors, Madras*	*Rep. by VIII of 1890.*
	XV	*Aden Port-dues* . . .	*Rep. by XII of 1875.*
	XVI	*Subordinate Criminal Court, Ootakamund.*	*Rep. by VIII of 1868.*
	XVII	*Cambay Gulf Light-dues* . .	*Rep. by VIII of 1868.*
	XVIII	*Regulation of Ports, Madras* .	*Rep. by XII of 1875.*
	XIX	*Authentication of certain Stamped Paper.*	*Rep. by XVIII of 1869.*
	XX	*Dispossessed Landed Proprietors, N.-W. Provinces.*	*Rep. by VIII of 1868.*
	XXI	*Native Passenger Ships.* . .	*Rep. by XII of 1870.*
	XXII	*Transportation*	*Rep. by VIII of 1868*
	XXIII	*Kurnul, Madras* . . .	*Rep. by XV of 1874.*
	XXIV	*Family of Nawáb of Carnatic* .	*Rep. by VIII of 1868.*
	XXV	*Municipal Commissioners, Bombay Town.*	*Rep. by Bom. Act II of 1865.*
	XXVI	*State offences*	*Rep. by VIII of 1868.*
	XXVII	*Governor-General* . . .	*Rep. by VIII of 1868.*
	XXVIII	*Police, Port of Madras* . .	*Rep. by Mad. Act I of 1881, s. 15.*
	XXIX	*Suits in Civil Courts, N.-W. Provinces.*	*Rep. by VIII of 1868.*
	XXX	*Nawáb of Carnatic* . . .	*Rep. by VIII. of 1868.*
	XXXI	Alluvial Lands, Bengal . .	Rep (N.-W. P.) by XIX of 1873; (C. P.) by XVIII of 1881; (Assam) by Reg. I of 1886. Printed at p. 246.
	XXXII	*Tanjore*	*Rep. by XV of 1874.*
	XXXIII	*Indian Navy*	*Rep. by VIII of 1868.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1858	XXXIV	Lunacy, Supreme Courts	Rep. in part by XVI of 1874. Printed at p. 247.
	XXXV	Lunacy, Mufassal Courts	Rep. in part by XIV of 1870; (Bengal) by Ben. Act IX of 1879. Printed at p. 254.
	XXXVI	Lunatic Asylums	Rep. in part by XVI of 1874. Amended by XVIII. of 1886; XX of 1889. Printed at p. 259.
	XXXVII	Nawáb of Carnatic	Rep. in part by XVI of 1874. XII. of 1891. Amended by XII of 1891. Not reprinted
	XXXVIII	*Delhi Territory*	*Rep. by VIII of 1868.*
	XXXIX	*Arrears of Land-revenue, Madras.*	*Rep. by Mad. Act II of 1864, s. 65.*
	XL	*Minors, Bengal*	*Rep. by VIII. of 1890.*
	XLI	*Stamp-duties, Bengal.*	*Rep. by XVIII of 1869.*
1859	I	Merchant Seamen.	Rep. in part by XV of 1863; XIV of 1870; XVI of 1874; IV of 1875; XII of 1876. Amended by XIII of 1876, ss. 9 & 10; V of 1883, ss. 34 to 37. VI of 1891. XII of 1891. Not printed, as a consolidating Bill is before the Council.
	II	*Amending Act XXX of 1858*	*Rep. by VIII of 1868.*
	III	*Cantonment Joint Magistrates.*	*Rep. by VIII of 1887.*
	IV	*Removal of Prisoners*	*Rep. by VIII of 1868.*
	V	Ghátwáli Lands, Birbhum	Printed at p. 266.
	VI	*Ahmedabad Magistracy*	*Rep. by XII of 1873.*
	VII	*Customs-duties*	*Rep. by XVI of 1874.*
	VIII	*Civil Procedure*	*Rep. by X of 1877.*
	IX	Claims to Property seized as forfeited.	Rep. in part by VIII of 1868. XII of 1891. Printed at p. 267.

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1859	X*	Recovery of Rent, Bengal	Rep. in part by XXXVI of 1860; VII of 1870; XIV of 1870; XII of 1891. (locally) by XX of 1865; (Bengal) by Ben. Act VI of 1862; (N.-W. P.) by XIV of 1863, s. 5. Rep. locally (Bengal) by VIII of 1885; Ben. Act VIII of 1869, s. 107; Ben. Act I of 1879. Rep. (N.-W. P.) by XVIII of 1873. (C. P.) by IX of 1883. Printed at p. 269.
	XI	Sales of Land for Revenue Arrears, Bengal.	Rep. in part by XIV of 1870; XII of 1891. Ben. Act VII of 1868, s. 29; Ben. Act III of 1881, and amended by Ben. Act III of 1862. Amended by Ben. Act VII of 1880; Rep. (Assam) by Reg. I of 1886. Printed at p. 300.
	XII	Pilots, Calcutta	Rep. in part by XIV of 1870; X of 1873. Amended by VI of 1883. Printed at p. 316.
	XIII	Fraudulent Breaches of Contract by Workmen.	Rep. in part by XVI of 1874. Printed at p. 324.
	XIV	*Limitation of Suits*	*Rep. (except part of s. 15) by IX of 1871. Residue rep. by I of 1877.*
	XV	*Patents*	*Rep. by V of 1888.*
	XVI	*Nawáb of Carnatic*	*Rep. by XXXVII of 1860.*
	XVII	*Abkári, Bombay Town*	*Rep. by Bom. Act V of 1878.*
	XVIII	*Magistrates and Justices of the Peace.*	*Rep by X of 1875.*
	XIX	*Continuing Act XXVIII of 1857.*	*Rep, by VIII of 1868.*

* Act X of 1859 is apparently now only in force in the Orissa Division, Mánbhum, and part of the Jalpáiguri District.

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1859	XX	Mappillas, Malabar . .	Rep. in part by XIV of 1870; Mad. Act VII of 1869. Printed at p. 325.
	XXI	*Governor-General* . . .	*Rep. by VIII of 1868.*
	XXII	*Amending Act I of 1852* . .	*Rep. by XIII of 1871.*
	XXIII	*Land Customs, Madras and Bombay.*	*Rep. by XVI of 1874.*
	XXIV	Police, Madras . . .	Rep. in part by XVII of 1862; XIV of 1870; XVI of 1874; Mad. Act I of 1885. Amended by Mad. Act V of 1865; I of 1872; III of 1888; Printed at p. 328.
	XXV	*Native Passenger Vessels* .	*Rep. by VIII of 1876.*
	XXVI	*Continuing Act XXVIII of 1857.*	*Rep. by VIII of 1868.*
	XXVII	*State Offences*	*Rep. by VIII of 1868.*
	XXVIII	*Foreigners*	*Rep. by VIII of 1875.*
1860	I	*Duty on Salt, N.-W. P* . .	*Rep. by VIII of 1875.*
	II	*Carriage of Passengers by Sea.*	*Rep. by XII of 1885.*
	III	*Sessions Judges, Bengal* . .	*Rep. by XVII of 1862.*
	IV	*Civil Procedure* . . .	*Rep. by XXIII of 1861.*
	V	*Cattle-trespass* . . .	*Rep. by I of 1871.*
	VI	*Native Articles of War* . .	*Rep. by XXIX of 1861.*
	VII	*Joint Stock Banks* . . .	*Rep. by X of 1866, s. 219.*
	VIII	*Electric Telegraphs* . . .	*Rep. by I of 1876.*
	IX	Disputes between Workmen and Employers.	Rep. in part by IX of 1871. Printed at p. 336.
	X	*Customs-duties* . . .	*Rep. by VIII of 1868.*
	XI	*Indigo Contracts* . . .	*Rep. by VIII of 1868.*
	XII	*Emigration to St. Vincent.*	*Rep. by XIII of 1864.*
	XIII	*Farakhabad Zila Court* .	*Rep. by VIII of 1868.*
	XIV	*King of Oudh.*	*Rep. by XII of 1891.*
	XV	*Calcutta Canals.* . . .	*Rep. by XII of 1873.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1860	XVI	*Amending Act XIV of 1856*	*Rep. by XVI of 1874.*
	XVII	*Escaped Convicts*	*Rep. by V of 1871.*
	XVIII	*Governor-General*	*Rep. by VIII of 1868.*
	XIX	*Port-dues*	*Rep. by XII of 1875.*
	XX	Sir Jamsetjee Jeejeebhoy	Not reprinted.
	XXI	Registration of Societies	Rep. in part by XVI of 1874. Printed at p. 338.
	XXII	Chittagong Hill-tracts	Rep. in part by XVI of 1874. XII of 1891. Amended by Ben. Act IV of 1863. Rep. by XIV of 1874 (when notified). Printed at p. 342.
	XXIII	Abkári Bengal	Rep. in part by VI of 1863; XIV of 1870; XVI of 1874; XII of 1891. Rep (locally) by X of 1871; (Bengal) by Ben. Act II of 1876. Not reprinted.
	XXIV	*Marriages by Scotch Ministers*	*Rep. by VIII of 1868.*
	XXV	*Port-dues, Bassein*	*Rep. by XII of 1875.*
	XXVI	*Administrator-General*	*Rep. by XXIV of 1867.*
	XXVII	*Collection of Debts on Successions.*	*Rep. by VII of 1889.*
	XXVIII	Boundary-marks, Madras	Rep. in part by XIV of 1870; Amended by Mad. Act II of 1884. XII of 1891. Printed at p. 345.
	XXIX	*Continuing Act XXVII of 1857.*	*Rep. by VIII of 1868.*
	XXX	*Kunch and Kálpi*	*Rep. by VIII of 1868.*
	XXXI	*Arms*	*Rep. by XI of 1878.*
	XXXII	*Income-tax*	*Rep. by VIII of 1868.*
	XXXIII	*Emigration to Natal*	*Rep. by XIII of 1864.*
	XXXIV	Indemnity for acts during Mutiny.	Printed at p. 351.
	XXXV	*Transportation of Convicts*	*Rep. by XVII of 1862.*
	XXXVI	*Stamps*	*Rep. by X of 1862.*
	XXXVII	*Repealing Act XVI of 1859*	*Rep. by VIII of 1868.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1860	XXXVIII	*Nawáb of Carnatic*	*Rep. by VIII of 1868.*
	XXXIX	*Income-tax*	*Rep. by VIII of 1868.*
	XL	*Amending Act XXXVI of 1860*	*Rep. by X of 1862.*
	XLI	*Emigration to St. Kitts*	*Rep. by XIII of 1864.*
	XLII	*Small Cause Courts, Mufassal*	*Rep. by XI of 1865.*
	XLIII	*Amending Act VIII of 1859*	*Rep. by XXIII of 1861.*
	XLIV	*Governor-General*	*Rep. by VIII of 1868.*
	XLV	Penal Code	Rep. in part by XIV of 1870; X of 1882. Amended by VI of 1861; XXVII of 1870; XIX of 1872; X of 1873, s. 15; (N.-W. P.) by XII of 1881; VIII of 1882; X of 1886, ss. 21-24; XIV of 1887, s. 79; I of 1889, s. 9; IV of 1889, s. 3; XIII of 1889; IX of 1890, s. 149; X of 1891; XII of 1891. Printed at p. 353.
	XLVI	*Emigration to French Colonies*	*Rep. by VII of 1871.*
	XLVII	University Degrees	Printed at p. 457.
	XLVIII	Amending Act XIII of 1856 (Police).	Rep. in part by III of 1863; XIV of 1870; XVI of 1874; IV of 1877; (Bombay) by Bom. Act IX of 1867. Amended (Bombay) by Bom. Act IV of 1882. Rep. (Calcutta) by Ben. Act IV of 1866. (Madras) by Mad. Act VIII of 1867, s. 81. Printed at p. 458.
	XLIX	*Emigration to British Colonies*	*Rep. by XIII of 1864.*
	L	*Vacations in Civil Courts, Bengal.*	*Rep. by VI of 1871.*
	LI	*Amending Act XXXVI of 1860.*	*Rep. by X of 1862.*
	LII.	*Amending Act XXIII of 1854*	*Rep. by IV of 1877.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1860	LIII	*Amending Act X of 1859* .	*Rep. by VIII of 1868.*
1861	I	*Supreme Court, Bombay* . .	*Rep. by VIII of 1868.*
	II	*Amending Act VI of 1857* .	*Rep. by X of 1870.*
	III	*Customs-duty, Cochin* . .	*Rep. by XIII of 1871.*
	IV	*Port-dues, Calingapatam and Munsoorcottah.*	*Rep. by Mad. Act VII of 1867.*
	V	Police	Rep. in part by IX of 1871; XVI of 1874; X of 1882: (locally) by Ben. Act VII of 1869. Amended by III. of 1888. (Assam) by Reg. II of 1883. Extended to Upper Burma with modifications by XX of 1886, ss. 6 and 7. Printed at p. 464.
	VI	*Commencement of Penal Code* .	*Rep. by VIII of 1868.*
	VII	*Salt-duty, Bombay*	*Rep. by XXIV of 1869.*
	VIII	*Port-dues, Amherst* . . .	*Rep. by IX of 1864.*
	IX	*Minors*	*Rep. by VIII of 1890.*
	X	*Repealing Enactments relating to Civil Procedure.*	*Rep. by XIV of 1870.*
	XI	*Amending Act XIV of 1859* .	*Rep. by VIII of 1868.*
	XII	*Amending Act XLII of 1860* .	*Rep. by XI of 1865.*
	XIII	*Police*	*Rep. by VIII of 1868.*
	XIV	*Rohilkhand*	*Rep. by Reg. IV of 1876.*
	XV	*Port-dues, Konkan Ports* . .	*Rep. by Bom. Act XI of 1866.*
	XVI	Stage-carriages . .	Rep. in part by XIV of 1870. Amended by XVI of 1876. Printed at p. 474.
	XVII	*Customs duties, N.-W. P.* .	*Rep. by VIII of 1875.*
	XVIII	*License-duty*	*Rep. by II of 1862.*
	XIX	*Paper-currency*	*Rep. by III of 1871.*
	XX	*Amending Act XXV of 1858* .	*Rep. by Bom. Act II of 1865.*
	XXI	*Income-Tax*	*Rep. by VIII of 1868.*
	XXII	*Cattle-trespass*	*Rep. by I of 1871.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1861	XXIII	*Civil Procedure*	*Rep. by X of 1877.*
	XXIV	*Banks of Bengal, Madras and Bombay.*	*Rep. by III of 1871.*
	XXV	*Criminal Procedure* . . .	*Rep. by X of 1872.*
	XXVI	*Occupation of Land, Malacca* .	*Not in force in British India.*
	XXVII	*Andaman Islands* . . .	*Rep. by Reg. IV. of 1874.*
	XXVIII	*Merchant Seamen* . . .	*Rep. by XV of 1863.*
	XXIX	*Native Articles of War* . .	*Rep. by V of 1869.*
	XXX	*Bengal Military Orphan Society.*	*Rep. by VIII of 1868.*
	XXXI	*Saltpetre Manufacture* . .	*Rep. by XII of 1876.*
	XXXII	*Limitation*	*Rep. by VIII of 1868.*
	XXXIII	*Amending Schedule to Act XXV of 1861.*	*Rep. by VIII of 1869.*
1862	I	*Continuing Act XXXIII of 1857.*	*Rep. by VIII of 1868.*
	II	*Repealing Act XVIII of 1861*	*Rep. by VIII of 1868.*
	III	Government Seal . . .	Printed at p. 478.
	IV	*Bank of Bengal* . . .	*Rep. by XI of 1876.*
	V	*Payment at Presidency Banks*	*Rep. by XI of 1876.*
	VI	*Annexing Schedule to Act IV of 1862.*	*Rep. by XI of 1876.*
	VII	*Amending Act XLVI of 1860*	*Rep. by VII of 1871.*
	VIII	King of Oudh	*Rep. by XII of 1891.*
	IX	*Income-tax*	*Rep. by VIII of 1868.*
	X	*Stamp-duties*	*Rep. by VII of 1870.*
	XI	*Amending Act X of 1860* .	*Rep. by VIII of 1868.*
	XII	*Repealing in part Act II of 1835.*	*Rep. by VIII of 1868.*
	XIII	*Silver and Copper Coinage* .	*Rep. by XXIII of 1870.*
	XIV	*Amending Act XIV of 1859* .	*Rep. by VIII of 1868.*
	XV	*Amending Code of Criminal Procedure.*	*Rep. by VIII of 1869.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1862	XVI	*Income-tax*	*Rep. by VIII of 1868.*
	XVII	*Repealing enactments relating to Criminal Law.*	*Rep. by X of 1872.*
	XVIII	*Criminal Procedure, Supreme Courts.*	*Rep. by X of 1882.*
	XIX	*Contraband Salt, Oudh* . .	*Rep. by VIII of 1875.*
	XX	*Presidency High Courts* . .	*Rep. by X of 1877.*
	XXI	*Subordinate Medical Officers' Widows' and Orphans' Fund.*	*Rep. by VIII of 1868.*
	XXII	*Emigration to Seychelles* . .	*Rep. by XIII of 1864.*
	XXIII	*Customs-duties* . . .	*Rep. by XIV of 1870.*
	XXIV	*Continuing Act XX of 1862* .	*Rep. by X of 1877.*
1863	I	*Civil Courts, Burma* . .	*Rep. by VII of 1872.*
	II	*Appeals to Queen in Council* .	*Rep. by VI of 1874.*
	III	*Police, Straits Settlements* .	*Not in force in British India.*
	IV	*Effectuating Treaty with Burma.*	*Rep. by XX of 1886.*
	V	*Amending Act XXIX of 1861.*	*Rep. by V of 1869.*
	VI	*Sea-customs*	*Rep. by VIII of 1878.*
	VII	*Emigration to Saint Croix* .	*Rep. by XIII of 1874.*
	VIII	*Confinement of Prisoners sentenced by Courts.*	*Rep. by V of 1871.*
	IX	*Amending Code of Civil Procedure.*	*Rep. by X of 1877.*
	X	*Darjeeling*	*Rep. by XIX of 1867.*
	XI	*Peons for Service of Process* .	*Rep. by VII of 1870.*
	XII	*Mahoba and Jeitpur* . .	*Rep. by XV of 1874.*
	XIII	*Imprisonment of Convicts, Bombay Town.*	*Rep. by XII of 1876.*
	XIV	*Amending Act X of 1859 in N.-W. Provinces.*	*Rep. by XII of 1876.* *Rep. (C. P.) by IX of 1883.*
	XV	*Merchant Seamen* . . .	*Rep. by IV of 1875.*
	XVI	Excise on Spirits used exclusively in Manufactures.	Amended by XI of 1882, s. 6. Rep. in part by XII of 1891. Printed at p. 479.

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1863	XVII	*Municipal Commissioners, Straits Settlements.*	*Not in force in British India.*
	XVIII	*Master in Equity: Process of High Courts.*	*Rep. by X of 1877.*
	XIX	*Partition of Revenue-paying Estates.*	*Rep. by XVI of 1889.*
	XX	Religious Endowments	Rep. in part by VII of 1870; XIV of 1870; XVI of 1874. Amended by XII of 1891. Printed at p. 481.
	XXI	*Recorders' Courts, Burma*	*Rep. by VII of 1872.*
	XXII	*Acquisition of Land for certain Works of Public Utility.*	*Rep. by X of 1872.*
	XXIII	Claims to Waste-lands	Rep. in part by IX of 1871. Printed at p. 487.
	XXIV	*Burma Courts*	*Rep. by VII of 1872.*
	XXV	*Imprisonment of Convicts, Calcutta.*	*Rep. by XII. of 1867.*
	XXVI	*Customs-duties*	*Rep. by VIII of 1868.*
	XXVII	*Income-tax*	*Rep. by VIII of 1868.*
	XXVIII	*Stamp-duties, Straits Settlements.*	*Not in force in British India.*
	XXIX	*Receipts of Presidency Banks*	*Rep. by XI of 1876.*
	XXX	*Claims against Native Government of Oudh*	*Rep. by VIII of 1868.*
	XXXI	Official Gazette	Printed at p. 493.
	XXXII	*Continuing Act XX of 1862*	*Rep. by X of 1877.*
1864	I	*Purwa and Khadi*	*Rep. by XV of 1874.*
	II	Aden	Amended by XVI of 1891. Printed at p. 493.
	III	Foreigners	Rep. in part by XII of 1876. Amended by XII of 1891. Printed at p. 499.
	IV	*Small Cause Court, Karachi*	*Rep. by VIII of 1868.*
	V	*Extension of Civil Procedure Code to Sindh.*	*Rep. by VIII of 1868.*
	VI	Whipping	Rep. in part by X of 1872; XVI of 1874; X of 1882.

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1864	VI	Whipping—*contd.*	Extended to Upper Burma with modifications by XX of 1886, ss. 6 & 7. Printed at p. 505.
	VII	*Salt, Central Provinces*	*Rep. by VIII of 1875.*
	VIII	Comptoir d'Escompte de Paris	Not reprinted.
	IX	*Repealing Act VIII of 1861*	*Rep. by VIII of 1868.*
	X	*Abkari, Bengal*	*Rep. by X of 1871.*
	XI	*Native Law Officers*	*Rep. by VIII of 1868.*
	XII	*Effectuating Act V of 1863 (Treaty with Burma).*	*Rep. by XX of 1886.*
	XIII	*Emigration of Native Labourers.*	*Rep. by VII of 1871.*
	XIV	*Joint Judge of the Konkan*	*Rep by VIII of 1868.*
	XV	Tolls on Public Roads and Bridges.	Printed at p. 508.
	XVI	*Registration of Assurances*	*Rep. by XX of 1866.*
	XVII	Official Trustees	Rep. in part by XIV of 1870; XII of 1876; XII of 1891. Amended by II of 1890. Printed at p. 509.
	XVIII	*Municipal Committee, Lucknow*	*Rep. by XV of 1873.*
	XIX	*Mirzapur*	*Rep. by XIV of 1874.*
	XX	*Minors, Bombay*	*Rep. by VIII of 1873.*
	XXI	*Police Magistrates*	*Rep. by IV of 1877.*
	XXII	*Military Cantonments*	*Rep. by III of 1880.*
	XXIII	*Customs-duties*	*Rep. by VIII of 1868.*
	XXIV	*Non-Regulation Districts, N.-W. P.*	*Rep. by XV of 1874.*
	XXV	*Marriage of Christians*	*Rep. by V of 1865.*
	XXVI	*Small Cause Courts, Presidency-towns.*	*Rep. by XV of 1882.*
	XXVII	*Justices of the Peace*	*Rep. by II of 1869.*
	XXVIII	*Abkari*	*Rep. by X of 1871.*
1865	I	*Extension of Enactments to Non-Regulation Provinces.*	*Rep. by XV of 1874.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1865	II	*Rural Police, N.-W. P.*	*Rep. by III of 1869.*
	III	Common Carriers . .	Rep. (as to carriers by rail) by IV of 1879. Rep. in part by IX of 1890. Printed at p. 518.
	IV	*Administrator-General* . .	*Rep. by XXIV of 1867.*
	V	*Marriage of Christians* .	*Rep. (except as to Straits) by XV of 1872.* *Not in force in British India.*
	VI	*Continuing Arms Act* . .	*Rep. by VI of 1866.*
	VII	*Government Forests* . .	*Rep. by XII of 1891.*
	VIII	*Validating Imprisonment of certain Persons.*	*Rep. by V of 1871.*
	IX	*Registration of Assurances* .	*Rep. by XX of 1866.*
	X	Succession	Rep. in part by XXIV of 1867; VII of 1870; XV of 1877; XII of 1891. Amended by XIII of 1875; II of 1877; VI of 1881; VI of 1889; II of 1890; XII of 1891. Printed at p. 521.
	XI	*Mufassal Small Cause Courts* .	*Rep. by IX of 1887.*
	XII	*Prisoners in Calcutta* . .	*Rep. by XII of 1867.*
	XIII	*Criminal Procedure, High Courts.*	*Rep. by X of 1875.*
	XIV	*Civil Courts, Central Provinces.*	*Rep. by XVI of 1885.*
	XV	Parsi Marriages and Divorces.	Rep. in part by VII of 1870; XIV of 1870; XII of 1876. Amended by VI of 1886, s. 31. Printed at p. 602.
	XVI	*Revenue Courts, Oudh* . .	*Rep. by XXXII of 1871.*
	XVII	*Customs-duties*	*Rep. by XXV of 1865.*
	XVIII	*Stamp-duties*	*Rep. by VII of 1870.*
	XIX*	*Courts, Punjab*	*Rep. by XVII of 1877.*

* See Act XIV. of 1884, validating decisions passed under this Act.

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1865	XX	*Pleaders and Mukhtars* . .	*Rep. by XVIII of 1870.*
	XXI	Intestate Succession, Parsis .	Printed at p. 613.
	XXII	*Amending Act XVIII of 1864* .	*Rep. by XV of 1873.*
	XXIII	*Punjab Chief Court* . . .	*Rep. by XII of 1873.*
	XXIV	*Warrants of Attorney and Cognovits.*	*Rep. by XVI of 1874.*
	XXV	*Customs-duties* . . .	*Rep. by VIII of 1868.*
	XXVI	*Amending Native Articles of War.*	*Rep. by V of 1869.*
	XXVII	*Civil Appeals, Punjab* . .	*Rep. by IV of 1866, s. 52.*
	XXVIII	*Insolvent Traders, Bombay* .	*Rep. by VIII of 1868.*
	XXIX	*Amending Pleaders Act, 1865* .	*Rep. by XVIII of 1879.*
	XXX	Madras Irrigation Company.	Rep. in part by XVI of 1874. Printed at p. 616.
1866	I	*Government Paper Currency* .	*Rep. by III of 1871.*
	II	*Rural Police, N.-W. P.* .	*Rep. by III of 1869.*
	III	*Registrars, Recorders' Courts, Burma.*	*Rep. by VII of 1872.*
	IV	*Chief Court, Punjab* . . .	*Rep. by XVII of 1877.*
	V	Bills of Exchange: Commercial Law.	Rep. in part by IX of 1872; X of 1877; XII of 1879, s. 99; XXVI of 1881. Printed at p. 617.
	VI	*Continuing Arms Act* . .	*Rep. by XI of 1878.*
	VII	*Extending Act XXIII of 1840 to Straits Settlements.*	*Not in force in British India.*
	VIII	*Criminal Procedure* . . .	*Rep. by VIII of 1869.*
	IX	*Extending Pleaders Act to Sadr Court, N.-W. P.*	*Rep. by XVIII of 1879.*
	X	*Trading Companies*	*Rep. by VI of 1882.*
	XI	*Repealing Act IV of 1855* . .	*Rep. by XIV of 1870.*
	XII	*Private Watercourses* . .	*Rep. by XII of 1876.*
	XIII	*Limitation of certain Suits, Oudh.*	*Rep. by XXXII of 1871.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1866	XIV	Post-office	Rep. in part by XIV of 1870; XII of 1876. Amended by III of 1882. Printed at p. 618.
	XV	*Partnership*	*Rep. by IX of 1872.*
	XVI	*Signing Commissions under Act XIII of 1865.*	*Rep. by X of 1875.*
	XVII	*Indian Museum, Calcutta* .	*Rep. by XXII of 1876.*
	XVIII	*Customs-duty on Saltpetre* .	*Rep. by VIII of 1868.*
	XIX	*Salt, Madras*	*Rep. by XXIV of 1869.*
	XX	*Registration of Assurances* .	*Rep. by VIII of 1871.*
	XXI	Dissolution of Native Converts' Marriages.	Rep in part by VII of 1870; XVI of 1874; XII of 1891. Printed at p. 634.
	XXII	*Extending Marriage Act* . .	*Rep. by XV of 1872.*
	XXIII	Correcting Bombay High Court Letters Patent.	Printed at p. 642.
	XXIV	*Procedure of High Court, N.-W. Provinces.*	*Rep. by X of 1877.*
	XXV	Transfer of certain Securities to Government.	Rep. in part by XXIV of 1867; XVI of 1874; XII of 1876; XII of 1891. Printed at p. 642.
	XXVI	Subordinate Proprietors, Oudh	Rep. in part by XIV of 1870. Printed at p. 643.
	XXVII	Conveyance of Property vested in Mortgagees and Trustees.	Rep. in part by XIV of 1870; XVI of 1874; (locally) by IV of 1882. Printed at p. 646.
	XXVIII	Powers of Mortgagees and Trustees.	Rep. in part by XVI of 1874; VII of 1882, s. 6; (locally) by II of 1882. Printed at p. 661.
	XXIX	*Court of Requests, Straits Settlements.*	*Not in force in British India.*
	XXX	*Excise Revenue, Straits Settlements.*	*Not in force in British India.*
1867	I	Ganges Tolls	Printed at p. 673.
	II	*Removal of Prisoners* . .	*Rep. by V of 1871.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1867	III	Public Gambling	Rep. in part by XVI of 1874. Amended by XII of 1891. Amended (Lower Burma) by XVI of 1884, s. 6. Printed at p. 677.
	IV	*Meaning of "Offence"* . .	*Rep. by XXVII of 1870.*
	V	*Extending Penal Code to Straits Settlements.*	*Not in force in British India.*
	VI	*Limits of Districts, Punjab* .	*Rep. by XVII of 1887.*
	VII	*Purchasing Arms, &c., from Soldiers.*	*Rep. by XVI of 1888.*
	VIII	*Horse-racing*	*Rep. by IX of 1872.*
	IX	Comptoir d'Escompte de Paris	Not printed.
	X	*References by Mufassal Small Cause Courts.*	*Rep. by X of 1877.*
	XI	Oriental Gas Company . .	Not printed.
	XII	*Custody of Prisoners, Presidency-towns.*	*Rep. by V of 1871.*
	XIII	*Burma Coast-lights* . . .	*Rep. by IX of 1879.*
	XIV	Pandhari-tax, Central Provinces.	Rep. in part by XVI of 1874. Printed at p. 682.
	XV	*Municipal Committees, Punjab, Oudh, Central Provinces.*	*Rep. (Punjab) by IV of 1873;* *(Oudh) by XV of 1873;* *(C. P.) by XI of 1873.*
	XVI	Acting Judges	Printed at p. 683.
	XVII	*Customs-duties* . . .	*Rep. by XVII of 1870.*
	XVIII	Jhansi Courts	Rep. in part by XIV of 1870; XVI of 1874. Amended by XXVII of 1867. Printed at p. 684.
	XIX	Darjeeling	Rep. in part by XVI of 1874. Printed at p. 688.
	XX	*Transhipment of certain Goods* .	*Rep. by VI of 1873.*
	XXI	*Licensing Professions and Trades.*	*Rep. by IX of 1868.*
	XXII	Sarais and Puraos . .	Rep. in part by XII of 1891. Printed at p. 688.
	XXIII	Murderous Outrages, Punjab.	Rep. in part by XVI of 1874; XII of 1891. Revived and amended by IX of 1877. Amended by XII of 1891. Printed at p. 692.

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1867	XXIV	*Administrator-General* . .	*Rep. by II of 1874.*
	XXV	Printing Presses and Books .	Rep. in part by XIV of 1870; XII of 1891. Amended by X of 1890; XII of 1891. Printed at p. 696.
	XXVI	*Stamp-duties*	*Rep. by X of 1877.*
	XXVII	Deputy Commissioners	Rep. (Punjab) by XVII of 1877; (Oudh) by XXXII of 1871; (C. P.) by XVI of 1885.
	XXVIII	*Petty Sessions Courts, N.-W. Provinces.*	*Rep. by X of 1872.*
	XXIX	*Amending Act XXI of 1867* .	*Rep. by IX of 1868.*
	XXX	*Paper Currency*	*Rep. by III of 1871.*
	XXXI	*Certain Offences of Railway Servants.*	*Rep. by IV of 1879.*
	XXXII	Chief Commissioners' Powers.	Printed at p. 704.
	XXXIII	*Amending Act XXXI of 1861.*	*Rep. by VIII of 1875.*
	XXXIV	*Local Repeal of Act XIX of 1866.*	*Rep. by XIV of 1870.*
	XXXV	*Financial Commissioner, Punjab.*	*Rep. by XIV of 1870.*
	XXXVI	*Correcting Act XVII of 1862.*	*Rep. by X of 1872.*
	XXXVII	*Appeals, Oudh*	*Rep. by XI of 1871.*
1868	I	General Clauses.	Rep. in part by I of 1872; XII of 1891. Amended by I of 1887, ss. 9 and 10. Printed at p. 705.
	II	*Paper exported from Cochin* .	*Rep. by XIII of 1871.*
	III	*Powers of Assistant Commissioner, Panjab.*	*Rep. by XVII of 1877.*
	IV	Exempting certain Bombay Villages from General Regulations.	Rep. (except in Scheduled Districts) by XIV of 1874. Printed at p. 707.
	V	Commissioner in Sindh .	Rep. in part by XII of 1891. Amended by XII of 1891. Printed at p 708.
	VI	*Municipalities, N.-W. P.* . .	*Rep. by XV of 1873.*
	VII	*Appeals and Reviews, Punjab*	*Rep. by IX of 1873.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1868	VIII	*Repealing Obsolete Enactments.*	*Rep. by XIV of 1870.*
	IX	*Taxing Professions and Trades.*	*Rep. by IX of 1869.*
	X	*Amending Consolidated Customs Act.*	*Rep. by VIII of 1878.*
	XI	*Exempting Timber from Import-duty.*	*Rep. by XIV of 1870.*
	XII	*Power to suspend Act XI of 1841, s. 17.*	*Rep. by VIII of 1887.*
	XIII	King of Oudh . . .	Rep. in part by XIV of 1870. Not reprinted.
	XIV	*Contagious Diseases* . .	*Rep. by IX of 1888.*
	XV	*Stamps, High Courts* . .	*Rep. by VII of 1870.*
	XVI	*P. S. Amins, &c., Bengal* . .	*Rep. by VI of 1871.*
	XVII	*Failure of Bank of Bombay* .	*Rep. by XIV of 1870.*
	XVIII	*Small Cause Jurisdiction, Nilgiris.*	*Rep. by XII of 1891.*
	XIX	*Rent, Oudh*	*Rep. by XXII of 1886.*
	XX	*Duties in Lucknow* . . .	*Rep. by XIV of 1870.*
	XXI	*Nawab of the Carnatic* . .	*Rep. by XII of 1891.*
	XXII	*Mauza Kheria*	*Rep. by XV of 1874.*
	XXIII	*Abkári, British Burma* . .	*Rep. by X of 1871.*
	XXIV	Inoculation, Kumáon and Garhwál.	Printed at p. 709.
	XXV	*Coorg Courts*	*Rep. by Reg. II of 1881.*
	XXVI	*Municipal Lock-hospitals* . .	*Rep. by IX of 1888.*
	XXVII	*Registration*	*Rep. by VIII of 1871.*
	XXVIII	*Tenancy, Punjab* . . .	*Rep. by XVI of 1887.*
1869	I	Taluqdars, Oudh . . .	Amended by X of 1885. Printed at p. 710.
	II	*Justices of the Peace* . . .	*Rep. by X of 1882.*
	III	*Rural Police, N.-W. Provinces.*	*Rep. by XVI of 1873.*
	IV	Divorce	Rep. in part by VII of 1870; XII of 1873; (Punjab) by XVIII of 1884.

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1869	IV	Divorce—*contd.* . . .	Modified in Burma by XI of 1889. Printed at p. 721.
	V	Indian Articles of War .	Rep. in part by XIV of 1870. Amended by XIII of 1889 ; XII of 1891. Printed at p. 742.
	VI	*Emigration*	*Rep. by VII of 1871.*
	VII	*Forests, British Burma* . .	*Rep. by XIX of 1881.*
	VIII	*Criminal Procedure* . . .	*Rep. by X of 1872.*
	IX	*Income-tax*	*Rep. by XVI of 1870.*
	X	*Police Superannuation Funds* .	*Rep. by XII of 1873.*
	XI	*Land Customs, Madras and Bombay.*	*Rep. by XI of 1882.*
	XII	*Customs-duties*	*Rep. by XVII of 1870.*
	XIII	Procedure of High Court, N.-W. Provinces.	Rep. in part by X of 1875. Printed at p. 787.
	XIV	Civil Courts, Bombay .	Rep. in part by XIV of 1870 ; XII of 1876 ; XII of 1891. Amended by X of 1876 ; IX of 1880 ; XV of 1880 ; VII of 1889 ; VIII of 1890. Printed at p. 788
	XV	Prisoners' Testimony .	Rep. in part by XVI of 1874 ; X of 1877. Amended by XVII of 1875, s. 93. Printed at p. 796.
	XVI	Bhootan Dvárs .	Rep. in part by XVI of 1874. Printed at p. 802.
	XVII	*Landing Cargo* . .	*Rep. by VIII of 1878.*
	XVIII	*Stamp-duties*	*Rep. by I of 1879.*
	XIX	*Administrator-General* . . .	*Rep. by II of 1874.*
	XX	Volunteers	Rep. in part by XIV. of 1870 ; IX of 1871 ; XVI of 1874. Amended by XII of 1891. Printed at p. 804.
	XXI	*European Vagrancy* .	*Rep. by IX of 1874.*
	XXII	*Gáro Hills* .	*Rep. by XIV of 1874.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1869	XXIII	*Income-tax*	*Rep. by XVI of 1870.*
	XXIV	*Salt, Madras and Bombay* .	*Rep. by XVIII of 1877.*
	XXV	*Salt, N.-W. P., Punjab, &c.* .	*Rep. by VIII of 1875.*
	XXVI	*Correcting Act VIII. of 1863* .	*Rep. by V of 1871.*
1870	I	Quarantine Rules .	Printed at p. 809.
	II	*Subordinate Judges and Munsifs, Bengal.*	*Rep. by VI of 1871.*
	III	*Agror Valley*	*Rep. (Hasára Dist.) by Reg. I of 1872, s. 13.* *Rep. by IV of 1872.*
	IV	*Appeals to Assistant Commissioner, Kulu.*	*Rep. by V of 1874.*
	V	Costs of certain Petitions .	Rep. in part by II of 1874 ; XVI of 1874. Printed at p. 809.
	VI	*Fees for Registration of Emigrants.*	*Rep. by VII of 1871.*
	VII	Court-fees	Rep. in part by XIV of 1870 ; XVI of 1870 ; VIII of 1871 ; XII of 1891 ; (Punjab) XVII of 1887. Amended by XX of 1870 ; XV of 1872 ; XIII of 1875 ; V of 1881, s. 153 ; VI of 1889 ; VII of 1889 ; XIII of 1889 ; VIII of 1890 ; XII of 1891 ; (Punjab) by XVIII of 1884, s. 71. Printed at p. 810.
	VIII	Murder of Female Infants . .	Printed at p. 841.
	IX	*Elphinstone Land Company* .	*Rep. by XII of 1873.*
	X	Acquisition of Land for Public Purposes.	Rep. in part by IX of 1871 ; XII of 1876 ; (Oudh) XIII of 1879. Amended (Punjab) by XVIII of 1884, s. 74 ; XVIII of 1885. Printed at p. 843.
	XI	*Weights and Measures* . . .	*Rep. by XII of 1873.*
	XII	*Native Passenger Ships* . . .	*Rep. by VIII of 1876.*

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1870	XIII	*State Railways*	*Rep. by IV of 1879.*
	XIV	*Repealing Obsolete Enactments* .	*Rep. by XII of 1873.*
	XV	*Paper-currency*	*Rep. by III of 1871.*
	XVI	*Income-tax*	*Rep. by XII of 1871.*
	XVII	*Customs-duties*	*Rep. by XIII of 1871.*
	XVIII	*Power to exempt from Customs-duties.*	*Rep. by XVI of 1875.*
	XIX	*Bank of Bengal*	*Rep. by XI of 1876.*
	XX	Amending Court-fees Act, VII of 1870.	Not re-printed.
	XXI	Wills of Hindus, &c. . . .	Rep. in part and amended by V of 1881, s. 154. in part by XII of 1891. Printed at p. 856.
	XXII	*European British Subjects* . .	*Rep. by X of 1882.*
	XXIII	Coinage and the Mint . .	Rep. in part by XII of 1873; XII of 1876. Printed at p. 858.
	XXIV	Relief of Oudh Taluqdárs	Amended by XII of 1891. Printed at p. 863.
	XXV	*Timber-duty, Moulmain* . .	*Rep. by XII of 1873.*
	XXVI	Prisons	Rep. in part by XII of 1873; XVI of 1874; XII of 1891. Amended by XIV of 1878; XII of 1891. Extended to Coorg with modifications by II of 1871. Extended to Assam by Reg. II of 1875. Printed at p. 868.
	XXVII	Amending Penal Code . .	Rep. in part by X of 1872; XII of 1891. Amended by VIII of 1882; X of 1886, ss. 21 (*1*) & 24 (*1*); XII of 1891. Printed at p 879.
	XXVIII	*Commitments from Andamans* .	*Rep. by Reg. III of 1876.*
1871	I	Cattle-trespass . . .	Rep. in part by XVI of 1874. Amended by XVIII of 1883; I of 1891. Printed at p. 881.

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1871	II	*Extending Prisons Act, XXVI of 1870, to Coorg.*	*Rep. by XII of 1891.*
	III	*Paper Currency* . . .	*Rep. by XX of 1882.*
	IV	Coroners	Rep. in part by IX of 1871; X of 1873; XII of 1873; XVI of 1874; XII of 1891. Rep. in part and amended by X of 1881 and V of 1889. Printed at p. 889.
	V	Prisoners	Rep. in part by XII of 1873; XVI of 1874. Amended by IX of 1882; X of 1886, s. 25; XII of 1891. Printed at p. 895.
	VI	*Civil Courts, Bengal* . .	*Rep. by XII of 1887.*
	VII	*Emigration*	*Rep. by XXI of 1883.*
	VIII	*Registration of Documents* .	*Rep. by III of 1877.*
	IX	*Limitation*	*Rep. by XV of 1877.*
	X	*Excise; Northern India, Burma, Coorg.*	*Rep. by XXII of 1881.*
	XI	*Financial Commissioner, Oudh.*	*Rep. by XXXII of 1871.*
	XII	*Income-tax*	*Rep. by XVI of 1874.*
	XIII	*Customs-duties*	*Rep. by XVI of 1875.*
	XIV	*Amending Consolidated Customs Act*	*Rep. by VIII of 1878.*
	XV	*Relief of Broach Thákurs* . .	*Rep. by XIV of 1877.*
	XVI	*Survey of Steamers, Burma* .	*Rep. by VI of 1884.*
	XVII	*Rates on Land, Oudh* . .	*Rep. by IV of 1878.*
	XVIII	*Rates on Land, N.-W. Provinces.*	*Rep. by III of 1878.*
	XIX	Sessions Judges, Bengal and N.-W. Provinces.	Rep. in part by X of 1872. Printed at p. 903.
	XX	*Rates on Land, Punjab* . .	*Rep. by V of 1878.*
	XXI	Dehra Dún	Rep. in part by XVI of 1874; XII of 1891. Printed at p. 903.

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1871	XXII	Chaukidárs, N.-W. Provinces	Rep. in part and amended (Oudh) by XVIII of 1876; in part by XII of 1891. Printed at p. 904.
	XXIII	Pensions	Rep. in part by XII of 1891. Amended (locally) by Act XXI of 1886. Printed at p. 905.
	XXIV	*Local Public Works Loans* . .	*Rep. by XI of 1879.*
	XXV	*Amending Railway Act* . .	*Rep. by IV of 1879.*
	XXVI	Advances for Agricultural Improvements.	Rep. in part by XII of 1873; XVI of 1874. Amended by XXI of 1876. Rep. in places in which Act XIX of 1883 has been declared in force. Rep. by XII of 1891 so far as it applies to the Andaman and Nicobar Islands and the Pargana of Manpur. Not reprinted.
	XXVII	Criminal Tribes and Eunuchs.	Rep. in part by XVI of 1874; XII of 1876. Amended and extended to Bengal by VII of 1876. Printed at p. 910.
	XXVIII	*European Vagrants* . . .	*Rep. by IX of 1874.*
	XXIX	*Repealing Bengal Regulations* .	*Rep. by XII of 1873.*
	XXX	*Canals and Drainage, Punjab* .	*Rep. by VIII of 1873.*
	XXXI	Weights and Measures . .	Printed at p. 916.
	XXXII	*Civil Courts, Oudh* . . .	*Rep. (except s. 40) by XIII of 1879. S. 40, rep. by XXII of 1886.*
	XXXIII	*Land-revenue, Punjab* . .	*Rep. by XVII of 1887.*
1872	I	Evidence	Rep. in part by 44 & 45 Vict., c. 58, s. 127. Amended by XVIII of 1872; III of 1887; III of 1891. Extended to Upper Burma with modifications by XX of 1886, ss. 5 and 7. To be read with XVIII of 1891. Printed at p. 919.
	II	*Reviving Act XV of 1867* . .	*Rep. by IV of 1873.*
	III	Marriage	Rep. in part by XVI of 1874; XII of 1876. Amended by VI of 1886, s. 29. Printed at p. 967.

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1872	IV	Laws, Punjab	Rep. in part by I of 1878; VI of 1878; X of 1879; (when extended to Punjab, by IV of 1882; X of 1882; XVII of 1887; XII of 1891. Rep. in part and amended by XII of 1878. Amended by XV of 1875; XXIV of 1881; XII of 1891. Printed at p. 973.
	V	Sindh	Amended by XII of 1891. Printed at p. 987.
	VI	*Oaths and Affirmations* . .	*Rep. by X of 1873.*
	VII	*Courts, British Burma* . .	*Rep. by XVII of 1875.*
	VIII	*Income-tax*	*Rep. by XVI of 1874.*
	IX	Contract Law	Rep. in part (except as to Scheduled Districts) by I of 1877. Amended by IV of 1886. Printed at p. 988.
	X	*Criminal Procedure* . . .	*Rep. by X of 1882.*
	XI	*Extradition*	*Rep. by XXI of 1879.*
	XII	*Native Passenger Ships* . .	*Rep. by VIII of 1876.*
	XIII	*Patterns and Designs* . .	*Rep. in part by XVI of 1874. Residue rep. by V of 1888.*
	XIV	*Exempting Straits Settlements from Emigration Act.*	*Rep. by V of 1872, s. 52; XXI of 1883.*
	XV	Marriage of Christians . .	Rep. in part by XVI of 1874; XII of 1891. Amended by VI of 1886, s. 30; II of 1891; XII of 1891. To be read with II of 1892. Printed at p. 1047.
	XVI	*Spirit-duty, Burma* . . .	*Rep. by XI of 1889.*
	XVII	*Postponing Commencement of Code of Criminal Procedure.*	*Rep. by XII of 1873.*
	XVIII	Amending Evidence Act . .	Rep. in part by X of 1873; XVI of 1874; XII of 1876. Printed at p. 1073.

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1872	XIX	Definition of "Coin," Penal Code.	Printed at p. 1074.
	XX	Amending Act V of 1872 . .	Printed at p. 1074.
	XXI	*Lunatic Sepoys*	*Rep. by XI of 1877.*
	XXII	Amending Act X of 1859 in N.-W. Provinces and Central Provinces.	Rep. (N.-W. P., except as to certain Scheduled Districts) by XVIII of 1873; (C. P., except as to Scheduled Districts) by IX of 1883. Not reprinted.
	XXIII	*Re-importation of certain goods cleared at Rangoon.*	*Rep. by XX of 1886.*
	XXIV	*Repealing Bombay Reg. XIII, 1827, s. 34, cl. 9.*	*Rep. by XII of 1873.*
	XXV	*Salt, Punjab*	*Rep. by VIII of 1875.*
	XXVI	*Opium, Punjab*	*Rep. by I of 1878.*
	XXVII	*Criminal Procedure Code, Sindh.*	*Rep. by XVI of 1874.*
1873	I	*Burma Courts*	*Rep. by XVII of 1875.*
	II	Burma Ferries . . .	Rep. in part by XVI of 1874. Printed at p. 1075.
	III	Civil Courts, Madras . .	Rep. in part by XII of 1873; IX of 1887. XII of 1891. Amended by XIX of 1877; XXI of 1885. Rep. in part (when and where rules under s. 3 of Act VII of 1887 take effect), by VII of 1887, s. 6. Printed at p. 1078.
	IV	*Municipalities, Punjab* . .	*Rep. by XII of 1891.*
	V	Savings Banks . . .	Rep. in part by XII of 1873; XVI of 1874; XII of 1891. Printed at p. 1084.
	VI	*Transhipment of Goods* . .	*Rep. by VIII. of 1878.*
	VII	*Port-dues, Burma* . . .	*Rep. by XII of 1875.*
	VIII	Canals and drainage, Northern India.	Rep. in part by XII of 1873; XVI of 1874. Rep. in part (Punjab) by XVI of 1887. Amended by XII of 1891. Printed at p. 1087.

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1873	IX	*Appeals, Punjab*	*Rep. by XVII of 1877.*
	X	Judicial Oaths	Rep. in part by XII of 1873; XII of 1876. Printed at p. 1107.
	XI	*Municipalities, Central Provinces.*	*Rep. by XVII of 1889.*
	XII	*Obsolete Enactments Repeal*	*Rep. by XVI of 1874.*
	XIII	*Timber, Lower Burma*	*Rep. by XIX of 1881.*
	XIV	Lunatic Soldiers' Property	Rep. in part by XVI of 1874. Printed at p. 1110.
	XV	Municipalities, N.-W. Provinces and Oudh.	Rep. in part by XVI of 1874; (locally) by XV of 1883, ss. 5 and 17 (*1*). Printed at p. 1112.
	XVI	Village and Road Police, N.-W. Provinces.	Rep. in part by XVI of 1874; XII of 1876; XII of 1891. Printed at p. 1121.
	XVII	Nawáb Názim's Debts	Not reprinted.
	XVIII	*Rent, N.-W. Provinces*	*Rep. by XII of 1881.*
	XIX	Land-revenue, N.-W. Provinces.	Rep. in part by I of 1879; XIII of 1882; VIII of 1890; XII of 1891. Amended, by VIII of 1879; XV of 1886; XX of 1890, s. 64. Printed at p. 1124.
	XX	*Prince of Arcot*	*Rep. by XII of 1891.*
1874	I	*Quieting titles, N.-W. Provinces.*	*Rep. by XII of 1891.*
	II	Administrator-General	Rep. in part by I of 1879; and amended by IX of 1881. Amended by II of 1890; XII of 1891. Printed at p. 1178.
	III	Married Women's Property	Rep. in part by XII of 1876; VI of 1888, s. 9; XII of 1891. Printed at p. 1205.
	IV	Foreign Recruiting	Rep. in part by XII of 1876. Printed at p. 1208.

Year.	Number.	Subject or short title.	Repeals, amendments, and references.
1874	V	*Appeals to Assistant Commissioner, Kulu.*	*Rep. by XVII of 1877.*
	VI	*Appeals to Judicial Committee*	*Rep. by X of 1877.*
	VII	*Municipalities, Lower Burma.*	*Rep. by XI. of 1889.*
	VIII	Exercise of powers in Assam	Rep. in part by XII of 1891. Printed at p. 1209.
	IX	European Vagrancy .	Rep. in part by II of 1879. Amended by XII of 1891. Printed at p. 1210.
	X	*Salt :- Ganjam, Orissa* . .	*Rep. by XVIII of 1877.*
	XI	*Amending Code of Criminal Procedure.*	*Rep. by X of 1882.*
	XII	Exercise of Powers in Sylhet .	Printed at p. 1219.
	XIII	*European British Minors* .	*Rep. by XII of 1891.*
	XIV	Scheduled Districts .	Rep. in part by XIX of 1879 ; XIV of 1881, s. 14 ; XXV of 1881 ; VIII of 1883 ; VII of 1885 ; XII of 1891. Amended by XVII of 1886 ; XX of 1890 ; XII of 1891. Printed at p. 1220.
	XV	Local Extent of certain Enactments.	Rep. in part by VIII of 1875 ; XII of 1876 ; XVIII of 1877 ; VI of 1878 ; XI of 1878 ; XXVI of 1881 ; X of 1882 ; VII of 1885 ; VIII of 1887 ; IX of 1887 ; XII of 1891 ; and amended by XIV of 1881, ss. 14 and 15. Amended by VII of 1889 ; XIII of 1889 ; VIII of 1890 ; XX of 1890 ; XII of 1891. Printed at p. 1229.
	XVI	*Obsolete Enactments Repeal*	*Rep. by XII of 1876.*

THE UNREPEALED ACTS

OF

THE GOVERNOR-GENERAL IN COUNCIL.

ACT II. OF 1834.*

PASSED ON THE 20TH NOVEMBER 1834.

Secretaries to Government to exercise powers of Chief Secretaries.

BE it enacted that each of the Secretaries to the Government of India and to the Government of Fort William in Bengal shall be competent to perform all the duties and to exercise all the powers which by any Act of Parliament or any Regulation now in force are assigned to the Chief Secretary to the Government of Fort William in Bengal, and that each of the Secretaries to the Governments of Fort St. George and Bombay respectively shall be competent to perform all the duties, and to exercise all the powers, which by any Act of Parliament or any Regulation now in force are assigned to the Chief Secretaries to the Governments of Fort St. George and Bombay respectively.

ACT XIX. OF 1835.

PASSED ON THE 9TH NOVEMBER 1835.

Appointment of assistant to Agent for Sardárs in Dekkhan.

BE it enacted that it shall be competent for the Governor in Council of Bombay to appoint the Assistant Judge of the Zila Court of Puna to be assistant to the Agent for Sardárs in the Dekkhan, and it shall be competent to the Agent for Sardárs to refer to his assistant original suits against Sardárs for amounts not exceeding 5,000 rupees ;† and every decree of the assistant shall be open to an appeal to the Agent within (30) thirty days from the date of the decree; and every decision of the Agent on such appeal shall be open to a special appeal† to the Governor in Council, or to the Sadr Adálat, according as the rank of the Sardár may subject him to the jurisdiction of either authority, provided that such last-mentioned appeal shall be brought within (90) ninety days after the date of the decree of the Agent.

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* Compare 33 Geo. III., c. 52, s. 39; 53 Geo. III., c. 155, s. 79; 58 Geo. III., c. 84, s. 2 (repealed); and Bengal Regulation XXII. of 1806, s. 11 (repealed).

Act II. of 1834 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts: The Districts of Hazáribágh, Lohárdaga, and Mánbhúm, and Pargana Dhálbhúm, and the Kolhan in the District of Singbhum.—See *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504.

† Certain words, repealed by Act XII. of 1891, Sch. I., have here been omitted.

Acts VII. & X. of 1836.

Procedure in appeals to Governor of Bombay in Council.

2.* The provisions of the Code of Civil Procedure relating to appeals to a High Court from decrees passed in appeal shall apply, so far as may be, to appeals to the Governor in Council under this Act.

ACT VII. OF 1836.† *Repealed by 4 of 1891*

PASSED ON THE 28TH MARCH 1836.

Authority of certain Regulations.

1. IT is hereby enacted that the legality of acts done and levies made under Regulations III. and IV. of 1817, and VII. of 1818, and IV. of 1821, and XIX., XX., and XXI. of 1827, and XV. of 1828, and XX. of 1830, and II. and XIII. of 1831, and I. and X. of 1833 of the Bombay Code, shall not be questioned in any Court of law whatever.

ACT X. OF 1836.‡

PASSED ON THE 11TH APRIL 1836.

1. [*Repealed by Act XIV. of 1870.*]

Security to be given by person desiring to remove indigo-plant ordered to be delivered to him.

2 § Whenever the right to indigo-plant may be contested, and an order shall be passed under the provisions of clause ninth, section 3, Regulation VI., 1823, of the Bengal Code, for the delivery of indigo-plant to one of the parties claiming the same, such party shall not be allowed to cut or remove the indigo-plant until he shall have given sufficient security, to the satisfaction of the Court trying the case, to make good any claim that shall be ultimately established to such indigo-plant, whether arising from a prior right to the produce of the land, or from an arrear of rent due on account of the specific parcel of land from which the plant may have been produced.

Right of suit of person making advances for cultivation or delivery of indigo-plant when breach of contract is induced by third person.

3. § When a lawful contract shall have been made between a raiyat and another party, by which contract the raiyat shall have bound himself to cultivate indigo-plant for the other party, or to deliver indigo-plant to the other party, and when the other party shall have advanced money

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* S. 2 has been added by Act XII. of 1891, Sch. II.

† Act VII. of 1836 is repealed by Act VIII. of 1868, except as regards duties leviable on salt or opium. The legality of acts done and levies made under the repealed Bombay Regulations XXI. of 1827 (as to opium and spirits) and XX. of 1830 (as to Malwa opium) cannot therefore be questioned in any Court of law.

‡ Act X. of 1836 has been declared to apply to the whole of Bengal, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 6; and under s. 3 of the Scheduled Districts Act (XIV. of 1874) it has been declared in force in West Jalpaiguri, the Districts of Hazáribágh, Lohárdaga, and Mánbhúm, and Pargana Dhálbhúm, and the Kolhan; also in the District of Silhat.

Act X. of 1836 has also been declared by the Laws Local Extent Act (XV. of 1874), s. 7, to be in force in the whole of the N.-W. Provinces, except the Scheduled Districts; and it has further been declared, by notification under the Scheduled Districts Act (XIV. of 1874), to be in force in the scheduled portion of the Mirzapur District and in Jaunsar Báwar.

The whole of Act X. of 1836 has been repealed as to Assam by Act XII. of 1891.

§ The first six words of ss. 2 and 3, repealed by Act XVI. of 1874, have here been omitted.

to the raiyat for the purpose of enabling the raiyat to fulfil such contract, then if any other person, knowing that such contract exists, and that such advance has been made, shall prevail upon the raiyat to break such contract, the party who made the advance shall be entitled to proceed by civil action against the person who shall have so prevailed on the raiyat, as well as against the raiyat, and to recover from him or them, jointly or severally, damages to the extent of the injury sustained, together with costs of suit.

Bar of suit for act done to recover debt or secure performance of lawful contract.

Provided always that nothing in this section contained shall be construed to give a right of action against any person in consequence of any act which that person may have done for the purpose of procuring payment of a debt or performance of a lawful contract.

Power to examine both plaintiff and defendant in suit, and to award compensation to successful defendant.

4.* The Court trying any suit instituted under the provisions of Regulation VI., 1823, of the Bengal Code, or under the provisions of this Act, shall be authorized to examine both the plaintiff and the defendant whenever the Court shall deem such examination necessary to the ends of justice; and if the award be in favour of the defendant, to assign to the defendant a sum which may be a compensation to him for the expense and loss of time occasioned by the proceeding.

5. [*Repealed by Act VIII. of 1868.*]

ACT XXI. OF 1836.†

PASSED ON THE 19TH SEPTEMBER 1836.

Power to create new, and alter limits of existing, zilas.

IT shall be lawful for the Governor-General in Council, by an order in Council, to create new zilas in any part of the Presidency of Fort William in Bengal, and to alter the limits of existing zilas.

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* The first six words of s. 4, repealed by Act XVI. of 1874, s. 1, have here been omitted.

† Act XXI. of 1836 has been declared to apply to the whole of Bengal, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 6. It has also been declared in force by Regulation III. of 1872, s. 3, as amended by Regulation III. of 1886, s. 2, in the Santal Parganas, and under s. 3 of the Scheduled Districts Act (XIV. of 1874) in West Jalpaiguri, Western Dvars, the Districts of Hazáribágh, Lohárdaga, and Mánbhúm, and Pargana Dhálbhúm, and the Kolhan.

The Act has been repealed in the territories to which the Assam Land and Revenue Regulation, 1886, extends.

The Act has also been declared, by the Laws Local Extent Act (XV. of 1874), s. 7, to be in force in the whole of the N.-W. Provinces except the Scheduled Districts. It has been declared, by notification under the Scheduled Districts Act (XIV. of 1874), to be in force in the scheduled portion of the Mirzapur District and in Jaunsar Báwar.

Certain words and figures in the Act, repealed by Act XVI. of 1874, s. 1, have been omitted.

Acts IV. & VI. of 1837.

ACT IV. OF 1837.*

PASSED ON THE 17TH APRIL 1837.

1. It shall be lawful for any subject of His Majesty to acquire and hold in perpetuity, or for any term of years, property in land, or in any emoluments issuing out of land, in any part of the territories of the East India Company.†

All subjects of Crown empowered to hold land.

2. All rules which prescribe the manner in which such property as is aforesaid may now be acquired and held by natives of the said territories shall extend to all persons who shall, under the authority of this Act, acquire or hold such property.‡

Rules applied to holdings under Act.

ACT VI. OF 1837.

PASSED ON THE 1ST MAY 1837.

1.§ EVERY málguzár in the province of Katak, and every body of málguzárs in the said province, having, as such body, joint engagements with the Government, and being persons acknowledged as the proprietors or possessors of a permanent interest in the mahál for which they have engaged, shall be answerable for the jama fixed by the terms of the settlement now existing for every mahál of such málguzár or body of málguzárs, until a new settlement of such mahál shall be completed and confirmed, according to the provisions of Regulation VII. of 1822 and Regulation IX. of 1833 of the Bengal Code.

Liability of malguzars for jama fixed by settlement.

2. [*Repealed by Act XIV. of 1870, s. 1.*]

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* Act IV. of 1837 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh	See *Gazette of India*	Dec. 4, 1880, Pt. I., p. 672.
West Jalpaiguri	Ditto	Mar. 5, 1881, Pt. I., p. 74.
The District of Hazáribágh	Ditto	Oct. 22, 1881, Pt. I., p. 507.
Ditto Lohárdaga	Ditto	Oct. 22, 1881, Pt. I., p. 508.
Ditto Mánbhúm	Ditto	Oct. 22, 1881, Pt. I., p. 509.
Pargana Dhálbhúm in the District of Singbhum	Ditto	Oct. 22, 1881, Pt. I., p. 510.
The Jhánsí Division	Ditto	Aug. 31, 1878, Pt. I., p. 546.
The scheduled portion of the Mirzápur District	Ditto	May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	May 31, 1879, Pt. I., p. 382.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán	Ditto	Jan. 30, 1886, Pt. I., p. 48.
The District of Lahaul	Ditto	May 1, 1886, Pt. I., p. 301.
The District of Silhat	Ditto	Oct. 4, 1879, Pt. I., p. 621.

It has been extended, under the same Act, to the Scheduled Districts of Kumáon and Garhwál.—See *Gazette of India*, Nov. 4, 1876, Pt. I., p. 606.

† For the old law, see Bengal Regulation II. of 1793, ss. 17, 46.

‡ See also Act II. of 1853 and 4 B. L. R., F. B., 161.

§ The first five words of s. 1, repealed by Act XVI. of 1874, s. 1, have here been omitted.

ACT XXXVI. OF 1837.*

PASSED ON THE 20TH NOVEMBER 1837.

1.† THE jurisdiction vested in Collectors, Subordinate Collectors, and Assistant Collectors, by Regulations IX. of 1822 and VII. of 1828 of the Madras Code, in cases of embezzlement of public money, and of the falsification, destruction, or concealment of any public account, record, voucher, or document relating to public money, shall extend to cases of the embezzlement of any public property, or the falsification, destruction, or concealment of any public account, record, voucher, or document, relating to any public property, by any person of any of the classes described in the third clause of section 2 of the said Regulation IX. of 1822.

Extension of jurisdiction of Collectors and their subordinates in cases of embezzlement, &c., to similar offences by persons of certain classes.

2. All provisions of either of the said Regulations IX. of 1822 and VII. of 1828, which apply to cases of the embezzling of public money, shall apply to cases of the embezzling of any public property whatever, by persons of any of the classes described in the third clause of section 2 of the said Regulation IX. of 1822: all provisions of either of those Regulations, which apply to cases of the falsification, destruction, or concealment of any public account, record, voucher, or document relating to public money, shall apply to cases of the falsification, destruction, or concealment of any public account, record, voucher, or document, relating to any public property whatever, by persons of any of the said classes.

Extension of enactments relating to embezzlement, &c., to similar offences by persons of certain classes.

ACT XVI. OF 1838.‡

PASSED ON THE 23RD JULY 1838.

1. *First.*—In the territories subject to the Presidency of Bombay, all suits in regard to tenures, and the nature and extent of the interest and advantage which in virtue thereof should be enjoyed by the parties concerned, and all suits in which the right to possession of land is claimed, shall be brought in the Courts of Adálat and the Courts subordinate thereto, and not in the Courts of revenue.

Suits to be brought in Civil, and not Revenue, Courts.

Second.—[*Repealed by Bombay Act III. of 1876.*]

Third.—[*Repealed by Bombay Act II. of 1866.*]

2. If a suit be presented in the Court of a Judge or Collector, which such Judge or Collector shall not deem within his jurisdiction, the party presenting such suit shall be referred by the Court in which it may be first presented

Procedure on suit being presented to superior Court doubting its jurisdiction.

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* Act XXXVI. of 1837 has been declared to be in force in the whole of the Madras Presidency, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 4.

† Certain formal words, repealed by Acts XIV. of 1870 and XVI. of 1874 respectively, have here been omitted.

‡ Act XVI. of 1838 has been declared to apply to the whole of the Bombay Presidency, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 5.

Act XIX. of 1838.

to that in which, in the opinion of such Court, the jurisdiction lies, and the latter Court shall, in the event of its doubting its jurisdiction in the case, refer the question of jurisdiction to the Sadr Díwání Adálat, whose decision on the point shall be final.

And in subordinate Court so doubting.

3. If a suit be presented in any Court subordinate to the Court of a Judge or Collector, which suit such subordinate Court shall not deem to be within its jurisdiction, such subordinate Court shall submit the case to the Judge's or Collector's Court to which such subordinate Court is subordinate; and if the superior Court to which the case is so submitted shall be of opinion that such subordinate Court has jurisdiction in the case, such superior Court shall direct such subordinate Court to proceed with the case; and if such superior Court shall be of opinion that such subordinate Court has not jurisdiction in the case, such superior Court shall proceed in the manner directed in the last preceding section.

Transfer of suit entered in Court not having jurisdiction.

4. Whenever a Court of Adálat or a Revenue Court shall have entered on its file, under this Act, a suit in which it has not jurisdiction, it shall be competent to the Sadr Díwání Adálat, either on a reference from the Judge or Collector (as the case may be), or on application from the parties, to direct that the suit be transferred, with all the proceedings which may have taken place therein up to the period of transfer, to the Court possessing jurisdiction, which shall proceed therewith as if the suit had been originally filed in that Court.

Procedure on Court of appeal finding original suit was decided in wrong Court.

5. When any Court trying an appeal finds that the action was originally brought and decided in a Revenue Court, when it ought to have been brought and decided in a Court of Adálat, or a Court subordinate thereto, or that the action was originally brought and decided in a Court of Adálat, or a Court subordinate thereto, when it ought to have been brought and decided in a Revenue Court, the Court trying the appeal shall, instead of quashing the whole proceedings, annul only the decree, and refer the suit to be tried in the Court to which the jurisdiction properly belongs, and the Court trying any such case referred under the foregoing section shall take further pleadings, exhibits, and evidence only if it deem such necessary, and shall pass a new decree.

ACT XIX. OF 1838.*

PASSED ON THE 27TH AUGUST 1838.

1. [*Repealed by Act XIV. of 1870.*]

Rules as to coasting and other vessels belonging to Queen's subjects.

2. The following rules shall be in force with respect to vessels belonging to any of Her Majesty's subjects residing within the Presidency of Bombay, and employed on the coasts of the territories subject to the Government of Bombay, or in trading coastwise, as also with respect to fishing-vessels and harbour-craft belonging to any of the same Her Majesty's subjects.

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* Act XIX. of 1838 has been declared to apply to the whole of the Bombay Presidency, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 5. See Act X. of 1841, *infra*

3. Every such vessel employed as aforesaid, fishing-vessel, and harbour-craft, shall be marked or branded with the name of the place to which she belongs, and also with a number assigned for the same by the officer authorized to make such registry as is hereinafter mentioned;

Marking or branding vessels with name of place and number.

and the owner or owners of such vessel employed as aforesaid, fishing-vessel, and harbour-craft, shall cause such name and number to be painted in black paint upon a white ground on each quarter of such vessel employed as aforesaid, fishing-vessel, and harbour-craft, in English figures and letters, each figure and letter being six inches in length.

Owner to paint name and number.

4. The name and number of every such vessel employed as aforesaid, fishing-vessel, and harbour-craft, and her burthen, and also the name or names of the owner or owners thereof, shall be registered in a book to be kept for that purpose by the person hereinafter directed to make such registry.

Registry of name, number, and burthen.

At Bombay such registry shall be made by the Master-Attendant, and at other places within the said territories by the Collector of Sea-customs at such places respectively, or by such other person as shall be appointed by the Government of Bombay to act at such places respectively in the execution of this Act; and whenever any change shall take place in the burthen of such vessel employed as aforesaid, fishing-vessel, or harbour-craft, or in the name or names of the owner or owners thereof, such registry shall be made again: provided, however, that it shall not be lawful to give any name to such vessel employed as aforesaid, fishing-vessel, or harbour-craft, other than that by which she was first registered.

Registry by whom to be made.

Fresh registration.

5. The owner or owners of every such vessel employed as aforesaid, fishing-vessel, and harbour-craft, shall apply to the person authorized to make such registry in respect of the same, in order to have such registry as aforesaid made, or in order to have such registry made again as aforesaid.

Owners to apply for registry.

And whenever such vessel employed as aforesaid, fishing-vessel, or harbour-craft, is registered at a subordinate port, information thereof, and of the number there assigned to her, shall immediately be given by the registering officer to the Master-Attendant at Bombay.

Information of registry at subordinate port.

6. The duty of marking or branding and of ascertaining the burthen of such vessels employed as aforesaid, fishing-vessels, and harbour-craft at Bombay, shall be performed by the Master-Attendant; and at all other places within the territories subject to the Government of Bombay, the duty of marking or branding and of ascertaining the burthen of such vessels employed as aforesaid, fishing-vessels, and harbour-craft, shall be performed by the Collector of Sea-customs at such places respectively, or by such other persons as shall be appointed by the Government of Bombay to act at such places respectively in the execution of this Act.

Officers to perform duty of marking and branding.

7. The owner or owners of every such vessel employed as aforesaid, fishing-vessel, and harbour-craft, shall apply for and obtain a certificate of registry from the person authorized

Owner to obtain certificate of registry.

Act XIX. of 1838.

to make such registry as aforesaid, and such certificate shall be in the form specified in the schedule appended to this Act; and in the case of any certificate being lost or destroyed, a renewed certificate may be obtained in the same manner and on payment of the fees hereinafter mentioned.

Replacing lost certificate.

8. Such certificate of registry shall be sealed with the seal of the East India Company, and shall be signed by the person authorized to make such registry.

Sealing certificate.

9. [*Repealed by Act XII. of 1876.*]

10. The owner or owners of such vessels employed as aforesaid (fishing-vessels and harbour-craft being excepted), on being registered as aforesaid, shall pay—

Fees for certificates.

for each certificate of registry for a vessel not exceeding 20 Bombay khandis burthen, the fee of	1 rupee.
for each certificate for a vessel exceeding 20 such khandis burthen, and not exceeding 100 khandis burthen	5 rupees.
for each certificate for a vessel exceeding 100 such khandis burthen, and not exceeding 400 khandis burthen	7 ,,
and for each certificate for a vessel of 100 tons or greater burthen, per ton	2 annas.

11. The person or persons so authorized to make such registry as aforesaid shall receive the fees payable for the same, and shall pay such fees to such officer as the Governor of Bombay in Council shall appoint; the same to be carried to the credit of the Government of Bombay.

Fees to be credited to Government.

12. The owner or owners or commander of every such vessel employed as aforesaid, fishing-vessel, and harbour-craft, shall produce, on demand thereof by any officer of the customs within the said territories, or by any officer of the Navy, the certificate so directed to be applied for and obtained, in respect of such vessel employed as aforesaid, fishing-vessel, or harbour-craft as above mentioned.

Production of certificate on demand.

13. In case any such vessel employed as aforesaid, fishing-vessel, or harbour-craft, shall not be so marked or branded in all respects as hereinbefore directed, or in case the name and number of any such vessel employed as aforesaid, fishing-vessel, or harbour-craft, shall not be so painted, or shall not continue so painted on such vessel employed as aforesaid, fishing-vessel, or harbour-craft, in all respects as hereinbefore directed, or in case any such vessel employed as aforesaid, fishing-vessel, or harbour-craft, shall not be furnished with such certificate as hereinbefore specified, or in case the owner or owners or commander of any such vessel employed as aforesaid, fishing-vessel, or harbour-craft, shall not produce such certificate on demand thereof as hereinbefore directed, the owner or owners of every such vessel employed as aforesaid shall be subject to a fine of ten times the amount of the fees payable in respect of the certificate of registry of such vessel, the same being a vessel for the certificate of the registration of which any fee is payable; and the owner or owners of any such fishing-vessel or harbour-craft shall be subject to a fine of ten rupees, which fines may be recovered on conviction before any Magistrate having jurisdiction, within the said territories, by sale of such vessel, fishing-vessel, or harbour-craft, her furniture, ammunition, tackle,

Penalty for neglect to comply with rules.

Recovery of penalties.

and apparel; and such fines shall be payable as often as the owner or owners or commander of any such vessel employed as aforesaid, fishing-vessel, or harbour-craft, shall make such default as aforesaid, provided every such subsequent default be made after the expiration of one month from the date of the last conviction. Act XXV. of 1838.

Penalty on repetition of default.

14. The Governor of Bombay in Council may direct compensation for trouble and diligence in seizing such vessel employed as aforesaid, fishing-vessel, or harbour-craft, guns, furniture, tackle, ammunition, and apparel, as last-mentioned, to be made out of the proceeds of such seizure, to the person or persons who shall have seized the same, to such amount, in such manner, and in such shares or proportions, as to the said Governor in Council shall seem meet.

Power to direct compensation for trouble in seizing.

SCHEDULE.

This is to certify that *(here insert the names, occupation, and residence of the owners)* having declared that (he *or* they) are sole owner or owners of the vessel (fishing-vessel *or* harbour-craft) called *(the name)*, which is of the burthen of *(number of Bombay khandis)*, and that the said vessel (fishing-vessel *or* harbour-craft) was *(where and when built)*, the said vessel (fishing-vessel *or* harbour-craft) has been duly registered at the port of *(name of port)*.

Certified under my hand.

(Signature of officer.)

ACT XXV. OF 1838.*

Applies to wills made before 1866 & after 1 Feb 1839

PASSED ON THE 8TH OCTOBER 1838.

1. It is hereby enacted that the words and expressions hereinafter mentioned shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows (that is to say): the word "will"

Interpretation.

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* Act XXV. of 1838 has been copied from 1 Vic., c. 26. The whole Act, except as to wills made before the first January 1866, was repealed by Act VIII. of 1868. As to these wills, it extends to the whole of British India, except the Scheduled Districts. See the Laws Local Extent Act (XV. of 1874), s. 3.

Act XXV. of 1838 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

West Jalpaiguri	See *Gazette of India*	. Mar. 5, 1881, Pt. I., p. 4.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	. Oct. 22, 1881, Pt. I., p. 504.
The Jhánsí Division . . .	Ditto	. Aug. 31, 1878, Pt. I., p. 546.
The scheduled portion of the Mirzápur District . . .	Ditto	. May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	. May 31, 1879, Pt. I., p. 382.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán	Ditto	. Jan. 30, 1886, Pt. I., p. 48.
The District of Lahaul . . .	Ditto	. May 1, 1886, Pt. I., p. 301.
The District of Silhat . . .	Ditto	. Oct. 4, 1879, Pt. I., p. 631.

It has been extended, under the same Act, to the Scheduled Districts of Kumáon and Garhwál.—See *Gazette of India*, Nov. 4, 1876, Part I., p. 606.

Act XXV. of 1838.

shall extend to a testament, and to a codicil, and to an appointment by will or by writing in the nature of a will in exercise of a power, and also to a disposition by will and testament of devise of the custody and tuition of any child by virtue of an Act passed in the twelfth year of the reign of King Charles the Second, intituled "An Act for taking away the Court of wards and liveries, and tenures *in capite* and by Knight's service and purveyance, and for settling a revenue upon His Majesty in lieu thereof," or by virtue of an Act passed in the Parliament of Ireland in the fourteenth and fifteenth years of the reign of King Charles the Second, intituled "An Act for taking away the Court of wards and liveries, and tenures *in capite* and by Knight's service," and to any other testamentary disposition; and the words "real estate" shall extend to messuages, lands, rents, and hereditaments, whether corporeal, incorporeal, or personal, and to any undivided share thereof, and to any estate, right, or interest (other than a chattel interest) therein; and the words "personal estate" shall extend to leasehold estates and other chattels real, and also to monies, shares of Government and other funds, securities for money (not being real estates), debts, choses in action, rights, credits, goods, and all other property whatsoever which by law devolves upon the executor or administrator, and to any share or interest therein; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing, and every word importing the masculine gender only shall extend and be applied to a female as well as a male.

Enactments repealed.

2.* An Act passed in the thirty-second year of the reign of King Henry the Eighth, intituled "The Act of Wills, Wards, and primer seisins, whereby a man may devise two parts of his land;" and also an Act passed in the thirty-fourth and thirty-fifth years of the reign of the said King Henry the Eighth, intituled "The Bill concerning the explanation of Wills;" and also an Act passed in the Parliament of Ireland in the tenth year of the reign of King Charles the First, intituled "An Act how Lands, Tenements, &c., may be disposed by will or otherwise, and concerning wards and primer seisins;" and also so much of an Act passed in the twenty-ninth year of the reign of King Charles the Second, intituled "An Act for prevention of Frauds and Perjuries," and of an Act passed in the Parliament of Ireland in the seventh year of the reign of King William the Third, intituled "An Act for prevention of Frauds and Perjuries," as relates to devises or bequests of lands or tenements, or to the revocation or alteration of any devise in writing of any lands, tenements, or hereditaments, or any clause thereof, or to the devise of any estate *pur autre vie*, or to any such estate being assets, or to nuncupative wills, or to the repeal, altering, or changing of any will in writing concerning any goods or chattels or personal estate, or any clause, devise, or bequest therein; and also so much of an Act passed in the fourth and fifth years of the reign of Queen Anne, intituled "An Act for the amendment of the Law and the better advancement of Justice," and of an Act passed in the Parliament of Ireland in the sixth year of the reign of Queen Anne, intituled "An Act for the amendment of the Law and the better advancement of Justice," as relates to witnesses to nuncupative wills; and so far as the following Acts may be construed to have any operation within the territories of

* In ss. 2 to 5, 7 to 29, and 31, the words, "And it is hereby enacted that," prefixed to each of those sections, have been repealed by Act XII. of 1891, Sch. I., and therefore omitted.

the East India Company, so much of an Act passed in the fourteenth year of the reign of King George the Second, intituled "An Act to amend the law concerning common recoveries," and to explain and amend an Act made in the twenty-ninth year of the reign of King Charles the Second, intituled "An Act for prevention of Frauds and Perjuries," as relates to estates *pur autre vie*; and also an Act passed in the twenty-fifth year of the reign of King George the Second, intituled "An Act for avoiding and putting an end to certain doubts and questions relating to the attestation of wills and codicils concerning real estates in that part of great Britain called England, and in His Majesty's colonies and plantations in America;"* and also an Act passed in the Parliament of Ireland in the same twenty-fifth year of the reign of King George the Second, intituled "An Act for the avoiding and putting an end to certain doubts and questions relating to the attestation of wills and codicils concerning real estates," shall, from the passing of this Act, cease to have effect in the territories of the East India Company, except so far as the same Acts or any of them respectively relate to any wills or estates *pur autre vie* to which this Act does not extend. Act XXV. of 1838.

3.† This Act shall only extend to the wills of persons whose personal property cannot by the law of England pass to their representatives without probate or letters of administration obtained in one of Her Majesty's Supreme Courts of Judicature, and§ the Statutes and parts of Statutes aforesaid are only repealed as far as they relate to the succession to the property of such persons.‡

Wills to which Act applies.

Limitation of repeal.

4.† It shall be lawful for every person to devise, bequeath, or dispose of by his will, executed in manner hereinafter required, all real estate and all personal estate which he shall be entitled to, either at law or in equity, at the time of his death, and which, if not so devised, bequeathed, or disposed of, would devolve upon the heir-at-law of him, or, if he became entitled by descent, of his ancestor, or upon his executor or administrator, and§ the power hereby given shall extend to all estates *pur autre vie*, whether there shall or shall not be any special occupant thereof, and whether the same shall be a corporeal or an incorporeal hereditament, and whether the same shall be freehold or of any other tenure, and also to all contingent, executory, or other future interests in any real or personal estate, whether the testator may or may not be ascertained as the person or one of the persons in whom the same respectively may become vested, and whether he may be entitled thereto under the instrument by which the same respectively were created, or under any disposition thereof by deed or will; and also to all rights of entry for conditions broken, and other rights of entry, and also to such of the same estates, interests, and rights respectively, and other real and personal estate, as the testator may be entitled to at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will.

Property disposable by will.

5.† No will made by any person under the age of twenty-one years shall be valid.

Infant's will invalid.

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* Here certain words, repealed by Act XII. of 1891, Sch. I., have been omitted.

† In ss. 2 to 5, 7 to 29, and 31, the words, "And it is hereby enacted that," originally prefixed to each of those sections, have been repealed by Act XII. of 1891, Sch. I., and therefore omitted.

‡ See *Greenway* v. *Hogg*, Bourke, Part VII., pp. 116, 130.

§ Here the word "that," repealed by Act XII. of 1891, Sch. I., has been omitted.

Act XXV. of 1838.

Married woman's will.

6.* No will made by any married woman shall be valid, except such a will as might have been made by a married woman before the passing of this Act.

Mode of execution.

7.† No will shall be valid unless it shall be in writing, and executed in manner hereinafter mentioned (that is to say): it shall be signed at the foot or end thereof by the testator or by some other person in his presence and by his direction, and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.‡

Execution of appointment by will.

8.† No appointment made by will in exercise of any power shall be valid, unless the same be executed in manner hereinbefore required; and every will executed in manner hereinbefore required shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding that it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity.

Publication unnecessary.

9.† Every will executed in manner hereinbefore required shall be valid without any other publication thereof.

Incompetency of attesting witness to prove will not to invalidate it.

10.† If any person who shall attest the execution of a will shall, at the time of the execution thereof, or at any time afterwards, be incompetent to be admitted a witness to prove the execution thereof, such will shall not on that account be invalid.

Devise to attesting witness, or to his or her wife or husband, void, but witness may prove will.

11.† If any person shall attest the execution of any will, to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift, or appointment of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts), shall be thereby given or made, such devise, legacy, estate, interest, gift, or appointment, shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void, and such person so attesting shall be admitted as a witness to prove the execution, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift, or appointment mentioned in such will.

Attesting witness, with whose debt estate is charged by will, admissible to prove it.

12.† In case by any will any real or personal estate shall be charged with any debt or debts, and any creditor, or the wife or husband of any creditor, whose debt is so charged, shall attest the execution of such will, such creditor, notwithstanding such charge, shall be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof.

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* Here the words, "Provided also, and it is hereby enacted that," repealed by Act XII. of 1891, Sch. I., have been omitted.

† In ss. 2 to 5, 7 to 29, and 31, the words, "And it is hereby enacted that," originally prefixed to each of those sections, have been repealed by Act XII. of 1891, Sch. I., and therefore omitted.

‡ See *Casement* v. *Fulton*, 3 Moo. I. A. 395.

Act XXV. of 1838.

Executor not incompetent to prove will.

13.* No person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will, or a witness to prove the validity or invalidity thereof.

Revocation of will by testator's marriage.

14.* Every will made by a man or woman shall be revoked by his or her marriage (except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not, in default of such appointment, pass to his or her heir, executor, or administrator, or the person entitled as his or her next of kin under the Statute of Distributions).

Will not revoked by presumption of intention.

15.* No will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances.

Will or codicil how revocable.

16.* No will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or 2 by another will or codicil executed in manner hereinbefore required, or 3 by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or 4 by the burning, tearing, or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same.

Effect of obliteration, interlineation, or alteration.

17.* No obliteration, interlineation, or other alteration made in any will after the execution thereof, shall be valid or have any effect except so far as the words or effect of the will before such alteration shall not be apparent, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; but the will, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or some other part of the will opposite or near to such alteration, or at the foot or end of or opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

Revival of revoked will.

18.* No will or codicil, or any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in a manner hereinbefore required, and showing an intention to revive the same; and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary be shown.

Effect of acts not amounting to revocation done subsequent to execution.

19.* No conveyance or other act made or done subsequently to the execution of a will of, or relating to, any real or personal estate therein comprised, except an act by which such will shall be revoked as aforesaid, shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death.

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* In ss. 2 to 5, 7 to 29, and 31, the words, "And it is hereby enacted that," originally prefixed to each of those sections, have been repealed by Act XII. of 1891, Sch. I., and therefore omitted.

Act XXV. of 1838.

Will to be construed as if executed immediately before death.

20.* Every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

Property comprised in devise which cannot take effect to be included in residuary devise.

21.* Unless a contrary intention shall appear by the will, such real estate and interest therein as shall be comprised or intended to be comprised in any devise in such will contained, which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law, or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will.

General devise to operate as an execution of power of appointment.

22.* A general devise of the real estate of the testator, or of the real estate of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will; and in like manner a bequest of the personal estate of the testator, or any bequest of personal estate described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

Devise without words of limitation.

23.* Where any real estate shall be devised to any person without any words of limitation, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by the will.

Construction of words importing want or failure of issue.

24.* In any devise or bequest of real or personal estate the words "die without issue," or "die without leaving issue," or any other words which may import either a want or failure of issue, of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will, by reason of such person having a prior estate tail, or of a preceding gift being, without any implication arising from such words, a limitation of an estate tail to such person or issue, or otherwise; provided that this Act shall not extend to cases where such words as aforesaid import, if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

Devise of real estate to trustee or executor.

25.* Where any real estate shall be devised to any trustee or executor, such devise shall be construed to pass the fee simple or other the whole estate or interest which the tes-

* In ss. 2 to 5, 7 to 29, and 31, the words, "And it is hereby enacted that," originally prefixed to each of those sections, have been repealed by Act XII. of 1891, Sch I., and therefore omitted.

tator had power to dispose of by will in such real estate, unless a definite term of years, absolute or determinable, or an estate of freehold, shall thereby be given to him expressly or by implication. Act XXV. of 1838.

26.* Where any real estate shall be devised to a trustee without any express limitation of the estate, to be taken by such trustee, and the beneficial interest in such real estate, or in the surplus rents and profits thereof, shall not be given to any person for life, or such beneficial interest shall be given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee the fee simple or other the whole legal estate which the testator had power to dispose of by will in such real estate, and not an estate determinable when the purposes of the trust shall be satisfied.

Devise of real estate to trustee without limitation.

27.* Where any person to whom any real estate shall be devised for an estate tail, or an estate in quasi entail, shall die in the lifetime of the testator, leaving issue who would be inheritable under such entail, and any such issue shall be living at the time of the death of the testator, such devise shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

Devise of estate tail when devisee dies in testator's lifetime, leaving inheritable issue.

28.* Where any person, being a child or other issue of the testator to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person, shall die in the lifetime of the testator leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

Devise to issue of testator, who dies in testator's lifetime, but leaves issue alive at testator's death.

29.* Notwithstanding anything in this Act contained, any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the making of this Act.

Saving of wills of soldiers and seamen.

30. [*Repealed by Act XII. of 1891, Sch. I.*]

31.* This Act shall not extend to any will made before the first day of February in the year of our Lord 1839, and† every will re-executed or re-published or revived by any codicil shall, for the purposes of this Act, be deemed to have been made at the time at which the same shall be so re-executed, re-published, or revived; and† this Act shall not extend to any estate *pur autre vie* of any person who shall die before the first day of February in the year of our Lord 1839.

Saving of wills made before 1st February 1839.

and of certain estates.

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* In ss. 2 to 5, 7 to 29, and 31, the words, "And it is hereby enacted that," originally prefixed to each of those sections, have been repealed by Act XII. of 1891, Sch. I., and therefore omitted.

† Here the word "that," repealed by Act XII. of 1891, Sch. I., has been omitted.

Acts VII. & XX. of 1839.

ACT VII. OF 1839.*

PASSED ON THE 18TH MARCH 1839.

1. [*Repealed by Act XIV. of 1870.*]

2.† All tahsíldárs within the territories subject to the Presidency of Fort St. George shall be vested with the powers of Commissioners for the sale of property distrained for arrears of rent or of revenue, and shall be subject to all rules and provisions to which by any law or regulation such Commissioners are subject.

Tahsíldárs empowered to sell property distrained.

3. Provided always hat, in respect of the exercise of those powers, tahsíldárs shall be subject to the control and superintendence of the Collector, and shall not be subject to the authority of the Zila Judge, except in the case of any judicial proceedings.

Control of tahsíldárs in exercise of such power.

4. [*Repealed by Act XII. of 1891, Sch. I.*]

5. Provided also that tahsíldárs shall not be entitled to any fee or commission for selling such distrained property, but that all fees or commission which may be now lawfully taken by Commissioners for the sale of such distrained property shall be taken and carried to the account of Government.

Fees for selling property to be credited to Governments.

6. And it is hereby enacted that tahsíldárs shall have authority, subject to the orders of the Collector, to delegate the powers vested in them by the second section of this Act to any public servants placed under their authority, and that the provisions of "sections 3 and 5 " ‡ of this Act shall apply to all public servants to whom those powers shall have been so delegated, in the same manner as they apply to tahsíldárs.

Delegation of tahsíldárs' powers.

ACT XX. OF 1839.§

PASSED ON THE 29TH JULY 1839.

1. IT shall be lawful for the Governor in Council of Bombay to issue orders prohibiting the levy of haqqs and fees of every description, and customs, whether by land or sea, enjoyed by holders of rent-free lands or other persons, and of alienated shares of any item of revenue after the abolition or relinquishment thereof by Government.

Power to prohibit levy of haqqs, fees, and customs.

2. The legality of any orders which may have been heretofore issued, or of any orders which, conformably with this Act, hereafter shall be issued by the Governor in Council of Bombay, for prohibiting the levy of any such

Past and future prohibitions not to be questioned by any Court.

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* Act VII. of 1839 has been declared to apply to the whole of the Madras Presidency, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 4.

† Certain words, repealed by Act XII. of 1873, have here been omitted.

‡ The words quoted have been substituted for the words "the three last preceding sections" by Act XII. of 1891, Sch. II.

§ Act XX. of 1839 has been declared to apply to the whole of the Bombay Presidency, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 5. For orders issued under Act XX. of 1839, see *Bombay Government Gazette*, Sep. 12, 1872, p. 1015; *ibid*, Feb. 13, 1873, p. 130.

haqqs or fees, customs or alienated shares of any such item of revenue as aforesaid, shall not be questioned in any Court of law.

Act XXIV. of 1839.

3. Whoever shall levy any such haqq, fee, customs, or item of revenue, after any such order prohibiting the same as aforesaid shall have been published in the Government Gazette of the Presidency of Bombay, and by notice fixed at the post or place at which it has heretofore been claimed or collected, shall be punishable as for an undue exaction under Regulation XVII. of 1827,* section 16, of the Bombay Code, notwithstanding the offender be not a Revenue officer of Government.

Penalty for levy after prohibition.

ACT XXIV. OF 1839.

PASSED ON THE 2ND OCTOBER 1839.

An Act for the administration of Justice and collection of the Revenue in certain parts of the Districts of Ganjam and Vizagapatam.

1. [*Repealed by Act XIV. of 1870.*]

2.† The operation of the rules for the administration of civil and criminal justice, as well as those for the collection of the revenue, shall cease to have effect, except as hereinafter mentioned, within the under-mentioned tracts of country at present included in the Districts of Ganjam and Vizagapatam :—

Exemption of districts from certain rules.

IN THE DISTRICT OF GANJAM.

Zamindáris.

Pálúru.
Hummá ‡
Biridi.
Kallikóta.
Pratápagiri.
Mohari.
Vijayanagaram.
Háthagada.
Brahmanórachi.
Chíkati
Mandasa.
Súrangi.
Jaradá.
Jalantra.
Budárasangi.
Dhárákóta.
Bodagada.
Sherugada.
Tarlá.
Parlákimidi.

Amáni Estates.

Gumsará.
Suradá.
Aská.
Pornary (leg. Komari ?).
Kurlá.

IN THE DISTRICT OF VIZAGAPATAM.

Ancient Zamindáris.

Vijayanagaram.
Bobbili.

Hill Zamindáris.

Jayapúram.
Kurubhám.
Sangamvalasa.
Chemudum.
Páchipenta.
Andhram.
Sarvapalli-bhímavaram.
Sálúru.
Mádugula.
Belgám.
Mérangi.

Under Amáni.

Pálakonda.
Gólakonda.

* Repealed by Bom. Act V. of 1879.

† Certain words, repealed by Act XVI. of 1874, have here been omitted.

‡ In the 'Hoomanah' of the current copies the '*nah*' (*na*) is the sign of the genitive.

Act XXIV. of 1839.

Administration of civil and criminal justice in those districts.

3.* The administration of civil and criminal justice (including the superintendence of the police), and the collection and superintendence of the revenues of every description, within the tracts of country specified in the foregoing section, which are now included in the District of Ganjam, shall be vested in the Collector of Ganjam, and within those which are now included in the District of Vizagapatam, in the Collector of Vizagapatam, and shall be exercised by them respectively as Agents to the Governor of Fort St. George.

Power to prescribe rules for Government Agents.

4.* It shall be competent to the Governor in Council of Fort St. George, by an order in Council, to prescribe such rules as he may deem proper for the guidance of such Agents, and of all the officers subordinate to their control and authority, and to determine to what extent the decision of the Agents in civil suits shall be final, and in what suits an appeal shall lie to the Sadr Adálat, and to define the authority to be exercised by the Agents in criminal trials, and what cases he shall submit for the decision of the Faujdári Adálat.

Judgment in criminal trials referred by Agents to Faujdári Adálat.

5.* Upon the receipt of any criminal trials referred by either of the Agents under the rules which may be hereafter prescribed by the Governor in Council, the Faujdári Adálat shall proceed to pass a final judgment, or such other order as may, after mature consideration, seem to the Court requisite and proper, in the same manner as if the trial had been sent up in ordinary course from a Judge on circuit.

Appeals to Sadr Adálat from decrees of Agents.

6.* Upon the receipt of any appeal from a decree of either of the Agents, under the rules to be prescribed as aforesaid, the Court of Sadr Adálat shall proceed to try and determine it in the same manner as appeals from the Provincial Courts.

Commitments by Agents.

7.* Each of such Agents as aforesaid shall have the power of making commitments by warrant under his hand, which is possessed by the Governor of Fort St. George in Council by virtue of Regulation II. of 1819 of the Madras Code ; provided that the third, † fifth, sixth, and seventh sections of that Regulation shall remain in force and be applicable to commitments under this Act; provided also that in every case in which either of such Agents shall make any such commitment, he shall transmit immediately a report to the Governor in Council of Fort St. George for his orders.

Report of commitments.

Power to alter limits of tracts.

8.* It shall be competent to the Governor in Council of Fort St. George, by an order in Council, to make, from time to time,‡ such alterations in the limits of the tracts within the aforesaid districts placed under the jurisdiction of the said Agents respectively, as he may deem expedient.

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* In ss. 3 to 8, the words, "And it is hereby enacted that," originally prefixed to each of those sections, have been repealed by Act XVI. of 1874, and have therefore been omitted.

† Here the word "fourth," repealed by Act XII. of 1891, Sch. I., has been omitted.

‡ The words requiring the assent of the Governor-General, repealed by Madras Act I. of 1865, have here been omitted.

ACT XXIX. OF 1839.*

Act XXIX. of 1839.

PASSED ON THE 16TH DECEMBER 1839.

An Act for the Amendment of the Law relating to Dower.

Preamble.

1. WHEREAS it is expedient to extend the amendments in the English law of dower contained in the Statute 3rd and 4th William IV., chapter cv., to the territories of the East India Company, in cases which, but for the passing of this Act, would be governed by the English law of dower as it existed previously to the passing of the aforesaid statute :

Meaning of the words in the Act.

It is hereby enacted that the words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows ; that is to say, the word "land" shall extend to messuages, and all other hereditaments, whether corporeal or incorporeal (except such as are not liable to dower), and to any share thereof ; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing.

Widows to be entitled to dower out of equitable estates.

2.† When a husband shall die, beneficially entitled to any land for an interest which shall not entitle his widow to dower out of the same at law, and such interest, whether wholly equitable, or partly legal and partly equitable, shall be an estate of inheritance in possession, or equal to an estate of inheritance in possession (other than an estate in joint-tenancy), then his widow shall be entitled in equity to dower out of the same land.

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* The whole Act, except as to marriages contracted before first January 1866, was repealed by Act VIII. of 1868. As to its local extent, see the Laws Local Extent Act (XV. of 1874), s. 3.

This Act has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

West Jalpaiguri	See *Gazette of India*	. Mar. 5, 1881, Pt. I., p. 74.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	. Oct. 22, 1881, Pt. I., p. 504.
The Jhánsi Division	Ditto	. Aug. 31, 1878, Pt. I., p. 546.
The scheduled portion of the Mirzápur District	Ditto	. May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	. May 31, 1879, Pt. I., p. 382.
The Districts of Hazára, Peshá-war, Kohát, Bannu, Dera Ismail Khán, and Dera Ghazi Khán	Ditto	. Jan. 30, 1886, Pt. I., p. 48.
The District of Silhat . . .	Ditto	. Oct. 4, 1879, Pt. I., p. 631.

It has been extended, under the same Act, to the Scheduled Districts of Kumáon and Garhwál.—See *Gazette of India*, Nov. 4, 1876, Pt. I., p. 606.

It has been declared, under the same Act, not to be in force in the Scheduled District of Lahaul.—See *Gazette of India*, May 1, 1886, Pt. I., p. 301.

† In ss. 2 to 10, 12, and 14, the words, "And it is hereby further enacted that," originally prefixed to each of those sections, have been repealed by Act XII. of 1891, Sch. I., and have therefore been omitted.

Act XXIX. of 1839.

Seisin shall not be necessary to give title to dower.

3.* When a husband shall have been entitled to a right of entry or action in any land, and his widow would be entitled to dower out of the same if he had recovered possession thereof, she shall be entitled to dower out of the same, although her husband shall not have recovered possession thereof; provided that such dower be sued for or obtained within the period during which such right of entry or action might be enforced.

No dower out of estates disposed of.

4.* No widow shall be entitled to dower out of any land which shall have been absolutely disposed of by her husband in his lifetime, or by his will.

Priority to partial estates, charges, and specialty debts.

5.* All partial estates and interests, and all charges created by any disposition or will of a husband, and all debts, incumbrances, contracts, and engagements to which his land shall be subject or liable, shall be valid and effectual as against the right of his widow to dower.

Dower may be barred by a declaration in a deed.

6.* A widow shall not be entitled to dower out of any land of her husband, when in the deed by which such land was conveyed to him, or by any deed executed by him, it shall be declared that his widow shall not be entitled to dower out of such land.

Or by a declaration in the husband's will.

7.* A widow shall not be entitled to dower out of any land of which her husband shall die wholly or partially intestate when by the will of her husband, duly executed for the devise of free-hold estates, he shall declare his intention that she shall not be entitled to dower out of such land or out of any of his lands.

Dower shall be subject to restrictions.

8.* The right of a widow to dower shall be subject to any conditions, restrictions, or directions which shall be declared by the will of her husband, duly executed as aforesaid.

Devise of real estate to the widow shall bar her dower.

9.* Where a husband shall devise any land out of which his widow would be entitled to dower if the same were not so devised, or any estate or interest therein, to or for the benefit of his widow, such widow shall not be entitled to dower out of or in any land of her said husband, unless a contrary intention shall be declared by his will.

Bequest of personal estate to the widow shall not bar her dower.

10.* No gift or bequest made by any husband to or for the benefit of his widow of or out of his personal estate, or of or out of any of his land not liable to dower, shall defeat or prejudice her right to dower, unless a contrary intention shall be declared by his will.

Agreement not to bar dower may be enforced.

11. Provided always† that nothing in this Act contained shall prevent any Court of Equity from enforcing any covenant or agreement entered into by or on the part of any husband not to bar the right of his widow to dower out of his lands or any of them.

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* In ss. 2 to 10, 12, and 14, the words, "And it is hereby further enacted that," originally prefixed to each of those sections, have been repealed by Act XII. of 1891, Sch. I., and have therefore been omitted.

† Here the words, "and it is hereby further enacted," repealed by Act XII. of 1891, Sch. I., have been omitted.

12.* Nothing in this Act contained shall interfere with any rule of equity, or of any Ecclesiastical Court, by which legacies bequeathed to widows in satisfaction of dower are entitled to priority over other legacies.

Legacies in bar of dower still entitled to preference.

13. [*Repealed by Act XII. of 1891, Sch. I.*]

14.* This Act shall not extend to the dower of any widow who shall have been or shall be married on or before the first day of July one thousand eight hundred and forty, and shall not give to any will, deed, contract, engagement, or charge executed, entered into, or created before the said first day of July one thousand eight hundred and forty, the effect of defeating or prejudicing any right to dower.

Act not to take effect before the first July 1840.

15.† This Act shall not be construed to affect any right of property in land otherwise than by modifying the law of dower in cases governed by the English law of dower, or to extend or alter the jurisdiction of any of Her Majesty's Courts of Justice.

Saving of certain rights and jurisdiction.

ACT XXX. OF 1839.‡

PASSED ON THE 16TH DECEMBER 1839.

An Act for the Amendment of the Law of Inheritance.

1. WHEREAS it is expedient to extend the amendments in the English law of inheritance contained in the Statute 3rd and 4th William IV., chapter cvi., to the territories of the East India Company in cases which, but for the passing of this Act, would be gov-

Preamble.

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* In ss. 2 to 10, 12, and 14, the words, "And it is hereby further enacted that," originally prefixed to each of those sections, have been repealed by Act XII. of 1891, Sch. I., and have therefore been omitted.

† Here the words, "And it is hereby provided that," repealed by Act. XII. of 1891, Sch. I., have been omitted.

‡ The whole Act, except as to intestacies occurring before first January 1866, was repealed by Act VIII. of 1868. As to its local extent, see the Laws Local Extent Act (XV. of 1874), s. 3.

The Act has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

West Jalpaiguri	See *Gazette of India*.	Mar. 5, 1881, Pt. I., p. 74.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	. Oct. 22, 1881, Pt. I., p. 504.
The Jhánsi Division	Ditto	. Aug. 31, 1878, Pt. I., p. 546.
The scheduled portion of the Mirzápur District	Ditto	. May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	. May 31, 1879, Pt. I., p. 382.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán	Ditto	. Jan. 30, 1886, Pt. I., p. 48.
The District of Silhat . . .	Ditto	. Oct. 4, 1879, Pt. I., p. 631.

It has been declared, under the same Act, not to be in force in the Scheduled District of Lahaul.—See *Gazette of India*, May 1, 1886, Pt. I., p. 301.

S. 29 of the Trustees' and Mortgagees' Powers Act, 1866, is to be read as part of Act XXX. of 1839.—See Act XXVIII. of 1866, s. 29, *infra*.

Act XXX. of 1839.

erned by the English law of inheritance as it existed previously to the passing of the aforesaid statute :

It is hereby enacted that the words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows (that is to say), the word "land" shall extend to messuages, and all other hereditaments, whether corporeal or incorporeal, and whether freehold or of any other tenure, and to money to be laid out in the purchase of land, and to chattels and other personal property transmissible to heirs, and also to any share of the same hereditaments and properties or any of them, and to any estate of inheritance or estate for any life or lives, or other estate transmissible to heirs, and to any possibility, right, or title of entry or action, and any other interest capable of being inherited, and whether the same estates, possibilities, rights, titles, and interests, or any of them, shall be in possession, reversion, remainder, or contingency; and the words "the purchaser" shall mean the person who last acquired the land otherwise than by descent, or than by any escheat, partition, or enclosure, by the effect of which the land shall have become part of or descendible in the same manner as other land acquired by descent; and the word "descent" shall mean the title to inherit land by reason of consanguinity, as well where the heir shall be an ancestor or collateral relation, as where he shall be a child or other issue; and the expression "descendants" of any ancestor shall extend to all persons who must trace their descent through such ancestor; and the expression "the person last entitled to land" shall extend to the last person who had a right thereto, whether he did or did not obtain the possession or the receipt of the rents and profits thereof; and the word "assurance" shall mean any deed or instrument other than a will by which any land shall be conveyed or transferred at law or in equity; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing, and every word importing the masculine gender only, shall extend and be applied to a female as well as a male.

Meaning of words in the Act.

"Land."

"The purchaser."

"Descent."

"Descendant."

"Person last entitled."

"Assurance"

Number and gender.

2.* In every case descent shall be traced from the purchaser, and to the intent that the pedigree may never be carried further back than the circumstances of the case and the nature of the title shall require, the person last entitled to the land shall, for the purposes of this Act, be considered to have been the purchaser thereof, unless it shall be proved that he inherited the same, in which case the person from whom he inherited the same shall be considered to have been the purchaser, unless it shall be proved that he inherited the same, and in like manner the last person from whom the land shall be proved to have been inherited shall in every case be considered to have been the purchaser, unless it shall be proved that he inherited the same.

Descent shall always be traced from the purchaser, but the last owner shall be considered to be the purchaser, unless the contrary be proved.

* In ss. 2 to 6 and 9 to 12 the words, "And it is hereby further enacted that," originally prefixed to each of those sections, have been repealed by Act XII. of 1891, and have therefore been omitted.

3.* When any land shall have been devised by any testator, who shall die after the first day of July one thousand eight hundred and forty, to the heir or to the person who shall be the heir of such testator, such heir shall be considered to have acquired the land as a devisee, and not by descent; and when any land shall have been limited by any assurance executed after the said first day of July one thousand eight hundred and forty, to the person or the heirs of the person who shall thereby have conveyed the same land, such person shall be considered to have acquired the same as a purchaser by virtue of such assurance, and shall not be considered to be entitled thereto as his former estate or part thereof.

Heir entitled under a will, shall take as devisee, and a limitation to the grantor or his heirs shall create an estate by purchase.

4.* When any person shall have acquired any land by purchase under a limitation to the heir or to the heirs of the body of any of his ancestors, contained in an assurance executed after the said first day of July one thousand eight hundred and forty, or under a limitation to the heir or to the heirs of the body of any of his ancestors, or under any limitation having the same effect contained in a will of any testator who shall depart this life after the said first day of July one thousand eight hundred and forty, then and in any of such cases such land shall descend, and the descent thereof shall be traced, as if the ancestor named in such limitation had been the purchaser of such land.

Where heirs take by purchase under limitations to the heirs of their ancestors the land shall descend as if the ancestor had been the purchaser.

5.* No brother or sister shall be considered to inherit immediately from his or her brother or sister, but every descent from a brother or sister shall be traced through the parent.

Brothers, &c., shall trace descent through their parent.

6.* Every lineal ancestor shall be capable of being heir to any of his issue, and in every case where there shall be no issue of the purchaser, his nearest lineal ancestor shall be his heir in preference to any person who would have been entitled to inherit, either by tracing his descent through such lineal ancestor, or in consequence of there being no descendant of such lineal ancestor, so that the father shall be preferred to a brother or sister, and a more remote lineal ancestor to any of his issue, other than a nearer lineal ancestor or his issue.

Lineal ancestor may be heir in preference to collateral persons claiming through him.

7.† None of the maternal ancestors of the person from whom the descent is to be traced, nor any of their descendants, shall be capable of inheriting until all his paternal ancestors and their descendants shall have failed; and‡ no female paternal ancestor of such person, nor any of her descendants, shall be capable of inheriting until all his male paternal ancestors and their descendants shall have failed; and§ no female maternal ancestor of such person, or any of her de-

The male line to be preferred.

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* In ss. 2 to 6 and 9 to 12 the words, "And it is hereby further enacted that," originally prefixed to each of those sections, have been repealed by Act XII. of 1891, Sch. I., and have therefore been omitted.

† In ss. 7 and 8, the words, "And it is hereby further enacted and declared that," originally prefixed to each of those sections, have been repealed by Act XII. of 1891, Sch. I., and have therefore been omitted.

‡ Here the words, "also that," being repealed by Act XII. of 1891, Sch. I., have been omitted.

§ Here the word "that," being repealed by Act XII. of 1891, Sch. I., has been omitted.

Act XXX. of 1839.

scendants, shall be capable of inheriting until all his male maternal ancestors and their descendants shall have failed.

8.* Where there shall be a failure of male paternal ancestors of the person from whom the descent is to be traced, and their descendants, the mother of his more remote male paternal ancestors, or her descendants, shall be the heir or heirs of such person, in preference to the mother of a less remote male paternal ancestor, or her descendants; and where there shall be a failure of male maternal ancestors of such person, and their descendants, the mother of his more remote male maternal ancestor, and her descendants, shall be the heir or heirs of such person in preference to the mother of a less remote male maternal ancestor, and her descendants.

The mother of more remote male ancestor to be preferred to the mother of the less remote male ancestor.

9.† Any person related to the person from whom the descent is to be traced by the half blood shall be capable of being his heir, and the place in which any such relation by the half blood shall stand in the order of inheritance, so as to be entitled to inherit, shall be next after any relation in the same degree of the whole blood, and his issue, where the common ancestor shall be a male, and next after the common ancestor where such common ancestor shall be a female, so that the brother of the half blood on the part of the father shall inherit next after the sisters of the whole blood on the part of the father and their issue, and the brother of the half blood on the part of the mother shall inherit next after the mother.

Half blood, if on the part of a male ancestor, to inherit after the whole blood of the same degree, if on the part of a female ancestor after her.

10.† When the person from whom the descent of any land is to be traced shall have had any relation, who, having been attainted, shall have died before such descent shall have taken place, then such attainder shall not prevent any person from inheriting such land who would have been capable of inheriting the same by tracing his descent through such relation if he had not been attainted, unless such land shall have escheated in consequence of such attainder before the first day of July one thousand eight hundred and forty.

After the death of a person attainted, his descendants may inherit.

11.† This Act shall not extend to any descent which shall take place on the death of any person who shall die before the said first day of July one thousand eight hundred and forty.

Act not to extend to any descent before 1st July 1840.

12.† Where any assurance executed before the said first day of July one thousand eight hundred and forty, or the will of any person who shall die before that time, shall contain any limitation or gift to the heir or heirs of any person under which the person or persons answering the description of heir shall be entitled to an estate by purchase, then the person or persons who would have answered such description of heir if this Act had not been made shall become entitled by virtue of such limitation or gift, whether the person named as ancestor shall or shall not be living at the time aforesaid.

Limitations made before the 1st July 1840, to the heirs of a person then living, shall take effect as if the Act had not been made.

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* In ss. 7 and 8 the words, "And it is hereby further enacted and declared that," originally prefixed to each of those sections, have been repealed by Act XII. of 1891, Sch. I., and have therefore been omitted.

† In ss. 9 to 12 the words, "And it is hereby further enacted that," originally prefixed to each of those sections, have been repealed by Act XII. of 1891, Sch. I., and have therefore been omitted.

13.* This Act shall not be construed to affect inheritances of land, which are not subject to the English law of inheritance, or to extend or alter the jurisdiction of any of Her Majesty's Courts of Justice.

Saving of certain inheritances and jurisdiction.

Act XXXII. of 1839.

ACT XXXII. OF 1839.†

PASSED ON THE 30TH DECEMBER 1839.

An Act concerning the allowance of Interest in certain cases.

1. WHEREAS it is expedient to extend to the territories under the government of the East India Company, as well within the jurisdiction of Her Majesty's Courts as elsewhere,

Preamble.

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* In s. 13 the words, "And it is hereby provided that," originally prefixed to it, have been repealed by Act XII. of 1891, Sch. I., and have therefore been omitted.

† Act XXXII. of 1839 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

Sindh	See *Gazette of India*.	Dec. 4, 1880, Pt. I., p. 672.
West Jalpaiguri, the Western Dvárs, namely, that portion of the Jalpaiguri Division known as the Western Dvárs, that is, the country lying between the Tistá and Sunkos rivers in the Jalpaiguri District, the Western Hills of Dárjiling (that is, the Hills west of the Tistá river in the District of Dárjiling), the Dárjiling Tarái, and the Damson Sub-division of the District of Dárjiling . . .	Ditto	. Mar. 5, 1881, Pt. I., p. 74.
The District of Hazáribágh .	Ditto	. Oct. 22, 1881, Pt. I., p. 507.
Ditto Lohárdaga .	Ditto	. Oct. 22, 1881, Pt. I., p. 508.
Ditto Mánbhum .	Ditto	. Oct. 22, 1881, Pt. I., p. 509.
The Pargana of Dhálbhum in the District of Singbhum .	Ditto	. Oct. 22, 1881, Pt. I., p. 510.
The Jhánsí Division . . .	Ditto	. Aug. 31, 1878, Pt. I., p. 546.
The scheduled portion of the Mirzápur District . . .	Ditto	. May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	. May 31, 1879, Pt. I., p. 382.
The Scheduled Districts of the Central Provinces . . .	Ditto	. Dec. 13, 1879, Pt. I., p. 771.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán	Ditto	. Jan. 30, 1886, Pt. I., p. 48.
The District of Lahaul . . .	Ditto	. May 1, 1886, Pt. I., p. 301.
The Districts of Kamrup, Naugong, Darrang, Sibságar, Lakhimpur, Goálpára (excluding the Eastern Dvárs), and Káchár (excluding the North Káchár Hills) . . .	Ditto	. Aug. 24, 1878, Pt. I., p. 533.
The District of Silhat . . .	Ditto	. Oct. 4, 1879, Pt. I., p. 631.

It has been extended, under the same Act, to the following Scheduled Districts :—

Kumáon and Garhwál . .	See *Gazette of India*.	Nov. 4, 1876, Pt. I., p. 606.
The North-Western Provinces Tarái	Ditto	. Sep. 23, 1876, Pt. I., p. 505.

Acts VIII. and IV. of 1840.

the provisions of the Statute 3rd and 4th William IV., chapter 42, section 28, concerning the allowance of interest in certain cases: *

It is therefore hereby enacted that upon all debts or sums certain, payable at a certain time or otherwise, the Court before which such debts or sums may be recovered may, if it shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in writing,† so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the term of payment; provided that interest shall be payable in all cases in which it is now payable by law.

Power of Court to allow interest.

ACT VIII. OF 1840.‡

PASSED ON THE 13TH APRIL 1840.

An Act concerning the signing of Awards by the members of Panchâyats.

IT is hereby enacted that in cases where the minority of the members of a panchâyat, held under the provisions of the Madras Code,§ may decline to sign the award of the panchâyat, the signature or mark of the majority shall be sufficient to give legal validity to the award; provided always that in such cases it shall be incumbent on such majority to admit the minority to record and attest by their mark or signature their reasons for declining to sign or mark the award passed by the majority.

Validity of award signed by majority of members of panchâyat.

ACT XV. OF 1840.‖

PASSED ON THE 29TH JUNE 1840.

An Act for extending Regulations XV. of 1827 and XIII. of 1830 of the Bombay Code to the Agents of foreign Sovereigns.

IT is hereby enacted that the provisions of Regulations XV. of 1827¶ and XIII. of 1830 of the Bombay Code be made applicable to the Agents of foreign Sovereigns having lands and possessions in the British territory of the Bombay Presidency, and to guardians and such other individuals as the Governor in Council of Bombay may consider it expedient to invest with the powers contained in the aforesaid Regulations; provided that in all cases the authority conferred shall be revocable at the discretion of the Governor in Council of Bombay.

Extension of Regulations to Agents of foreign Sovereigns and others.

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* See 6 Moo. I. A. 232: 7 *ib.* 263: 10 *ib.* 229.

† See 1 Beng. O. C. J. 41: Marshall 239.

‡ Act VIII. of 1840 has been declared to apply to the whole of the Madras Presidency, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 4.

§ See Reg. V. of 1816, s. 7.

‖ Act XV. of 1840 has been declared to apply to the whole of the Bombay Presidency, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 5. Act XVII. of 1840 has been repealed, so far as it relates to Bombay Regulation XV. of 1827, by Act XVI. of 1874.

¶ Reg. XV. of 1827 has been repealed by Act XVII. of 1862.

ACT XVII. OF 1840.*

Acts XVII. of 1840 and X. of 1841.

PASSED ON THE 10TH AUGUST 1840.

An Act for amending Regulation V., 1831, of the Madras Code, as far as the same regards penalties for certain breaches of the Salt Laws.

Preamble.

WHEREAS great inconvenience has been experienced in consequence of sending persons accused of petty offences against the salt-laws for trial in the Criminal Courts, who might be more conveniently tried by Magistrates as in the case of other offences subject to the same amount of punishment:

Recovery of penalties for breaches of salt-laws.

It is hereby enacted that all penalties prescribed by the Madras Code for any breaches of the salt-laws shall be recoverable before the Magistrate of the district:

Discretion to Magistrate as to prosecution of offenders.

Provided always that it shall be lawful for any such Magistrate, before whom any person shall be charged with the commission of any offence against the salt-laws, at his discretion, to proceed against such person in the same manner as against persons charged with offences, the punishment of which rests with the Criminal Court.

Limitation of power to punish.

Provided also that no Magistrate shall, under the authority of this Act, punish any offender by a fine exceeding fifty rupees, or by imprisonment, with or without labour, for a longer period than thirty days.

ACT X. OF 1841.†

PASSED ON THE 5TH JULY 1841.

An Act for prescribing the Rules to be observed, in order that ships or vessels belonging to ports within the territories under the government of the East India Company, or belonging to Native Princes or States, or their subjects, may become entitled to the privileges of British ships under a proclamation of the Governor-General of India in Council, made in pursuance of the Statute 3rd & 4th Victoria, ch. 56.‡

Preamble.

1. WHEREAS by a statute passed in the 3rd and 4th years of Her Majesty Queen Victoria, entitled "An Act to regulate the trade of ships built and trading within the limits of

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* Act XVII. of 1840 has been declared to apply to the whole of the Madras Presidency, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 0. Act XVII. of 1840 has been repealed by Mad. Act VI. of 1871 as regards places to which that Act may be extended. See 4 Mad. H. C. Rulings liii.

† Act XI. of 1850 (*infra*) is to be construed with, and as part of, this Act.—See s. 5 of that Act, *infra*.

Certain formal words in sections 2 to 6, 8 to 12, 14 to 19, 21, and 23 to 26, repealed by Act XVI. of 1874, have been omitted.

Act X. of 1841 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared under the Scheduled Districts Act (XIV. of 1874) to be in force in the following Scheduled Districts:—

Sindh	See *Gazette of India*	Dec. 4, 1880, Pt. I., p. 672.
Aden	Ditto	June 28, 1879, Pt. I., p. 434.
The District of Silhat . . .	Ditto	Oct. 4, 1879, Pt. I., p. 631.

‡ See *Crawford* v. *Spooner*, 4 Moo. I. A. 179.

Act X. of 1841.

the East India Company's Charter," it is enacted "that it shall be lawful for the Governor-General of India in Council, by proclamation,* to declare that all ships or vessels built or to be built within the limits of the Charter of the East India Company, being owned by Her Majesty's subjects, for whom the said Governor-General in Council has power to legislate, and belonging, under the regulations hereinafter provided for, to any ports in the territories under the Government of the said Company, shall be deemed to be British ships for all the purposes of trade within the said limits, including the Cape of Good Hope, and the territories and dependencies thereof; provided that upon such declaration being made the said Governor-General in Council shall, and the said Governor-General in Council is hereby accordingly empowered to, make regulations, to be enforced by suitable penalties, concerning the registering, licensing, and ascertaining the admeasurement of the tonnage and burden, and generally for the trading within the limits aforesaid of such ships or vessels;" and whereas it is further enacted in the same statute as follows, that is to say, "And whereas it may be expedient to admit to similar privileges and advantages any ships or vessels belonging to Native Princes or States in subordinate alliance with, or having subsidiary treaties with, the East India Company, or owned by subjects of any such Princes or States, be it therefore enacted that the Governor-General of India in Council may, by such regulations as aforesaid, such regulations being subject as aforesaid, admit to the privileges and advantages of British ships for the purposes of trade within the limits of the Charter of the said Company, including the Cape of Good Hope, and the territories and dependencies thereof, or to any of such privileges and advantages, any ships or vessels belonging to such Princes or States, or any of them, or owned by subjects of any such Princes or States; but any such regulations shall provide for the granting to such ships or vessels fit and convenient licenses or passes, and generally for the trading within the limits aforesaid of such ships or vessels;" and whereas, in pursuance of such enactments, it is expedient to frame such regulations as are mentioned therein, the compliance with which shall be required in order that ships or vessels may be deemed British ships, or be admitted to the privileges and advantages of British ships under such proclamation as aforesaid:

Ships to be registered. Certificate of registry.

It is hereby enacted that no ship or vessel shall be deemed a British ship under such proclamation as aforesaid (except as regards ships or vessels registered before the passing of this Act, or having a pass at the time of passing thereof) unless the person or persons claiming property therein shall have caused the same to have been registered at some one of the ports hereinafter mentioned within the territories of the East India Company, and shall have obtained a certificate of such registry from the person or persons authorized to make such registry and grant such certificate as hereinafter directed; the form of which certificate shall be as follows:—

"This is to certify that, in pursuance of the Act No. X. of 1841 of the Governor-General of India in Council, (here insert the names and occupation and residence of subscribing owners) having made and subscribed the declaration required by the said Act, and having declared that (he or they) together with (names, occupations, and residence of non-subscribing owners), (is or are) sole owner or owners, in the proportions specified on the back hereof, of the ship or vessel called the (ship's name) of (place at which the vessel shall

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* See page 37, *infra*.

be registered), which is of the burthen of (number of tons), and whereof (master's name) is master, and that the said ship or vessel was (when and where built) and (name and employment of surveying officer) having certified to us that the said ship or vessel has (number) decks and (number) masts, that her (here insert the measurement as ascertained by the rules hereinafter mentioned) that she is (how rigged) with a (standing or running) bowsprit, is (description of stern) sterned, (carvel or clincher) built, has (whether any or no) gallery, and (kind of head, if any) head : and the said subscribing owners having consented and agreed to the above description, the said ship or vessel, called the (name), has been duly registered at the port of (name of port), certified under our hands at the custom house, in the said port of (name of port), this (date) day of (name of month) in the year (words at length).

(Signed)————, Collector or Registrar of Shipping.

And on the back of such certificate of registry there shall be an account of the parts or shares held by each of the owners mentioned and described in such certificate, in the form and manner following :—

Name of several owners within mentioned.	*Number of shares held by each owner.*
Name	... Thirty-two.
Name	... Sixteen.
Name	... Eight.
	&c., &c.

(Signed)————, *Collector.*

Ports of registry.

2. The ports at which registration shall be made shall be the ports of Calcutta, Madras, Bombay,* and such other places subordinate to the Local Governments of India as such Governments respectively may, from time to time, declare to be registering ports under this Act.† Provided that ships or vessels built at any place other than any of such ports shall be allowed to make their first voyage to any of such ports, being the ports at which it is intended they shall be registered under a certificate to be granted by the principal British officer at the place where the ship is built, or if there be no British officer in authority there, then by three mer chants of such place, which certificate shall contain all the particulars with regard to the ownership and description of the ships or vessels contained in a certificate of registry, and shall specify the ports at which it is intended that they shall respectively be registered, and which certificate shall have all the effect of a certificate of registry under this Act, during the first voyage from the place of building to the ports at which the ships or vessels respectively shall be afterwards registered. Provided that such ships or vessels so proceeding on their first voyage as aforesaid shall be deemed British ships only whilst duly prosecuting such first voyage for the purpose of registry, and if they be not registered within a reasonable time after their arrival at the port of registry, the owner or owners, or master or other person having or taking the command

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* Here the word "Singapore," repealed by s. 1 of Act VII. of 1891, has been omitted.

† Rangoon and Akyab have been declared under this section. See *Calcutta Gazette* for 1854, p. 848; for 1856, p. 1549. So Kyook Phyoo, Bassein, Tavoy, and Mergui.—*Gazette of India*, February 11, 1871, Part I., p. 75.

Act X. of 1841. or charge of such ship or vessel, shall be liable,* on conviction before a Justice of the Peace or a Magistrate of the first class, to a penalty not exceeding 5,000 rupees.

Registrars.

3. The persons authorized to make such registry and to grant such certificates as aforesaid shall be "such persons"† as the Local Governments may from time to time appoint for the ports under their respective Presidencies.

Book of registry.

4. At every port where registry shall be made in pursuance of this Act a book shall be kept by the registering officer, in which all the particulars contained in the form of the certificate of the registry hereinbefore directed to be used shall be duly entered; and every registry shall be numbered in progression, beginning such progressive numeration at the commencement of each and every year. And such registering officer shall forthwith, or within one month at the furthest, send to the Government of the Presidency to which he is subordinate a true and exact copy, together with the number of every certificate which shall be by him so granted.

Declaration.

5. No registry shall henceforth be made, or certificate be granted, until the following declaration be made or subscribed before the registering officer, by the owner or major part of the owners of the ship or vessel required to be registered.

I, *A. B.*, (of place of residence and occupation) do truly declare that the ship or vessel (name) of (port or place) whereof (master's name) is at present master, being (kind of build, burthen, *et cetera*, as described in the certificate of the surveying officer), was (when and where) built, and that I, the said (*A. B.*), and the other owners (names and occupations if any, and where they respectively reside) am (or are) sole owner (or owners) of the said vessel, and that no other person or persons whatever hath or have any right, title, interest, share, or property therein or thereto; and that I, the said (*A. B.*), and the said other owners (if any) am (or are) truly and *bonâ fide* a subject (or subjects) of Her Majesty for whom the Governor-General of India in Council has power to legislate, and that no person not being subject as aforesaid, directly or indirectly, hath any share or part interest in the said ship or vessel. Provided that if the registering officer shall see occasion to doubt the truth of any of the facts contained in the above declaration, he shall not deem such declaration to be conclusive, but may refuse the registry or certificate, and his discretion exercised in this behalf shall be subject only to an appeal to the Local Government to which he is subordinate.

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* In ss. 2, 15, 17, and 23, for the words, "on information in any Court of Her Majesty or the East India Company by the Advocates-General of the respective Presidencies," "by information as aforesaid," "on information as aforesaid," "upon information as aforesaid," in each of the places where they occurred, the words, "on conviction before a Justice of the Peace or a Magistrate of the first class," were substituted by the Indian Merchant Shipping Act (IV. of 1875), s. 30. But Act IV. of 1875 has been repealed and superseded by the Indian Merchant Act (V. of 1883), s. 38 of which enacts that in ss. 2, 15, 17, and 23 of Act X. of 1841, for the words "on information in any Court of Her Majesty or the East India Company by the Advocates-General of the respective Presidencies," "by information as aforesaid," "on information as aforesaid," "upon information as aforesaid," in each of the places where they occurred, the words, "on conviction before a Presidency Magistrate or a Magistrate of the first class," shall be substituted.

† In s. 3, the words quoted have been substituted for the original words by Act VII. of 1891, s. 2.

6. In case the required number of joint owners of any ship or vessel shall not personally attend to make and subscribe the declaration hereinbefore directed to be made and subscribed, then and in such case such owner or owners as shall personally attend and make and subscribe the declarations aforesaid shall further declare that the part owner or part owners of such ship or vessel then absent is or are not resident within twenty miles of such port or place, and hath or have not, to the best of his or their knowledge or belief, wilfully absented himself or themselves in order to avoid the making the declaration hereinbefore directed to be made and subscribed, or is or are prevented by illness from attending to make and subscribe the said declaration.

Further declaration by owners who attend.

7. And in order to enable the registering officer to grant a certificate truly and accurately describing every ship or vessel to be registered in pursuance of this Act, and also to enable all other officers of customs, on due examination, to discover whether any such ship or vessel is the same with that for which a certificate is alleged to have been granted, it is hereby enacted that previous to the registering or granting of any certificate of registry as aforesaid some one or more person or persons appointed by the Local Governments respectively, taking to his or their assistance, if he or they shall judge it necessary, one or more person or persons skilled in the building and admeasurement of ships, shall go on board of every such ship or vessel that is to be registered, and shall strictly and accurately examine and admeasure every such ship or vessel as to all and every particular contained in the form of the certificate hereinbefore directed in the presence of the master, or of any other person who shall be appointed for that purpose on the part of the owner or owners, or in his or their absence by the said master, and shall deliver a true and just account in writing of all such particulars of the build, description, and admeasurement of every such ship or vessel as are specified in the form of the certificate above recited to the officer authorized to make such registry and grant such certificate of registry as aforesaid; and the said master or other person attending on the part of the owner or owners is hereby required to sign his name also to the certificate of such surveying or examining officer, in testimony of the truth thereof, provided such master or other person shall consent and agree to the several particulars set forth and described therein.

Measurement to be made.

"8.* The certificate of the surveying officer shall be in the form in the schedule to this Act or in such other form as the Governor-General in Council may from time to time prescribe; and such certificate shall be delivered to the registering officer before registry.

Certificate of surveying officer.

"9.* Subject to the provisions of section 70 of Act I. of 1859 (*an Act for the amendment of the law relating to Merchant Seamen*), as amended by section 9 of the Indian Merchant Seamen's Act, 1876, the tonnage of a ship or vessel required by law to be registered shall, previous to her being registered, be measured and ascertained according to such of the rules and orders for the time being in force in and under the Merchant Shipping Act, 1854, as amended by subsequent Acts [including the Merchant Shipping (Tonnage) Act, 1889] as apply to measurement of tonnage for the purpose of registry.

Measurement of tonnage for purpose of registry.

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* Ss. 8 to 12 have been substituted by Act VII. of 1891, s. 3, for those originally enacted.

Act X. of 1841.

"**10.*** Subject to the provisions referred to in the last foregoing section, the tonnage of a ship or vessel requiring to be measured for any purpose other than registry shall be measured and ascertained according to such of the rules and orders for the time being in force in and under the Merchant Shipping Act, 1854, amended as aforesaid, as apply to measurement of tonnage for a purpose other than registry.

Measurement of tonnage for purpose other than registry.

"**11.*** The rules and orders referred to in section 9 and section 10 of this Act shall, in their application to measurement of tonnage for the purposes of this Act, or of any enactment, rule, or order referring to this Act, be read and construed as if the Governor-General in Council were therein named instead of the Board of Trade or the authority for which the Board of Trade has been substituted by section 3 of the Merchant Shipping Act, 1872."

Substitution of Governor-General in Council for Board of Trade.

"**12.*** The true amount of the register tonnage of every ship or vessel to be measured and ascertained according to the rules and orders referred to in section 9 of this Act shall be deeply carved or cut in figures of at least three inches in length on the main beam of every such ship or vessel prior to her being registered."

Marking of register tonnage on ship or vessel.

13. [*Repealed by Act No. XI. of 1850, s. 1.*]

14.† Whenever the register tonnage of any ship or vessel shall have been ascertained according to the "said rules and orders," such account of register tonnage shall ever after be deemed the register tonnage of such ship or vessel, and shall be repeated in every subsequent registry of such ship or vessel, unless it shall happen that any alteration has been made in the form of burthen of such ship or vessel, or it shall be discovered that the register tonnage of such ship or vessel had been erroneously taken and computed.

Registered tonnage to be repeated in every subsequent register.

15. If such certificate as aforesaid shall be sold, lent, or otherwise disposed of to any person or persons whatever than those for whose use it is granted, or shall be made use of for the service of any other ship or vessel than the ship or vessel for which it is granted, such certificate shall thenceforth be utterly void, and the master or any owner of the ship or vessel who shall be proved to have sold, lent, or disposed of such certificate or made use of the same as aforesaid, or shall have concurred in or been privy to the committing any such offence, shall be liable, on conviction before a Presidency Magistrate or a Magistrate of the first class,‡ to a penalty not exceeding 10,000 rupees. And in case such ship or vessel shall be lost or taken by the enemy, burnt, or broken up, or otherwise prevented from returning to the port at which she is registered, or shall on any account have lost and forfeited the privileges of a British ship, or shall have been seized and legally condemned for illicit trading, or shall have been taken in execution for debt and sold by due process of law, or shall have been sold to the Crown,§ or shall

Fraudulent use of certificate.

* Ss. 8 to 12 have been substituted by Act VII. of 1891, s. 3, for those originally enacted.

† In s. 14, before the word "tonnage," wherever it occurs, the word "register" has been prefixed; and the words, "said rules and orders," have been substituted for the words "rules herein prescribed."—See Act VII. of 1891, s. 4.

‡ As amended by Act V. of 1883, s. 38. See foot-note at p. 30.

§ Here the words, "or the East India Company," being repealed by Act VII. of 1891, s. 5, have been omitted.

under any circumstances have been registered *de novo*, the certificate, if preserved, shall be delivered up, within one month after the arrival of the master in any port or place in the territories of the East India Company, to the registering officer at such port, in default whereof the master or any of the owners shall be liable, on conviction before a "Presidency Magistrate or a Magistrate of the first class,"* to a penalty not exceeding 5,000 rupees. And if any person not being such subject as aforesaid shall purchase or otherwise become entitled to the whole or to any part or share of or any interest in such ship or vessel, and the same shall be within the limits of any port of the territories of the East India Company, then and in such case the certificate of registry shall, within seven days after such purchase or transfer of property in such ship or vessel, be delivered up to the registering officer at such port, and if such ship or vessel shall be in any place not within the territories of the East India Company when such purchase or transfer of property shall take place, then the certificate shall be delivered up within fourteen days after the arrival of such ship or vessel, or of the master thereof, in any port of the territories of the East India Company, to the registering officer at such port, in default whereof the master or any of the owners shall be liable, on conviction before any Justice of the Peace, to a penalty not exceeding 5,000 rupees, recoverable in manner provided by "the law for the time being in force for the recovery of fines imposed by Criminal Courts."†

Change of master.

16. When and so often as the master of any ship or vessel registered in manner hereinbefore directed shall be changed, the master or owner of such ship or vessel shall deliver to the person or persons hereinbefore authorized to make such registry and grant such certificates of registry at the port where such change shall take place, if it be a port within the territories of the East India Company, the certificate of registry belonging to such ship or vessel, who shall thereupon indorse and subscribe a memorandum of such change, and shall forthwith give notice of the same to the proper officer of the port or place where such ship or vessel was last registered pursuant to this Act, who shall likewise make a memorandum of the same in the book of registers which is hereby directed and required to be kept, and shall forthwith give notice thereof in like manner as of the original entry. But if the change do not take place in any port within the territories of the East India Company, then such delivery, memorandum, and indorsement, shall be made and notice given at the first port within the territories of the East India Company at which the new master shall arrive after such change. In default of which delivery of the certificate such new master or any of the owners shall be liable, on conviction before a Justice of the Peace, to a penalty not exceeding 5,000 rupees, recoverable as aforesaid.

Name of ship.

17. It shall not be lawful for any owner or owners of any ship or vessel to give any name to such ship or vessel other than that by which she was first registered in pursuance of this Act; and† the owner or owners of all and every ship or vessel which shall be so registered shall, before such ship or vessel, after such registry, shall begin to take in any cargo, paint or cause to be painted, in white or yellow letters of a length of not less than four inches, upon a black ground on some conspicuous part of the stern, the name by which such ship or vessel shall have been registered pursuant to this Act, and the port to which she belongs, in a distinct and legible manner, and shall so keep and preserve the same; and‡

* The words quoted have been substituted by Act V. of 1883, s. 38.
† The words quoted have been substituted by Act VII. of 1891, s. 5.
‡ Here the word "that" has been repealed by Act VII. of 1891, s. 6 (*1*).

Act X. of 1841.

if such owner or owners or master or other person having or taking the charge or command of such ship or vessel, shall permit such ship or vessel to begin to take in cargo before the name of such ship or vessel has been so painted as aforesaid, or shall wilfully alter, erase, obliterate, or in any wise hide or conceal, or cause or procure or permit the same to be done, or shall in any written or printed paper, or other document, describe such ship or vessel by any name other than that by which she was first registered pursuant to this Act, or shall verbally describe, or cause or procure or permit such ship or vessel to be described, by any other name to any officer or officers of revenue in the due execution of his or their duty, then and in every such case the certificate of registry shall thenceforth become utterly void, and such owner or owners, or master or other person having or taking the charge or command of such ship or vessel, shall be liable, on conviction before a "Presidency Magistrate or a Magistrate of the first class,"* to a penalty not exceeding 10,000 rupees, "recoverable as aforesaid."†

Certificate of building.

18. All and every person and persons who shall apply for a certificate of the registry of any ship or vessel shall, and they are hereby required to, produce to the person or persons authorized to grant such certificate, a true and full particular under the hand of the builder of such ship or vessel, or in case the want of such certificate can be satisfactorily accounted for, then to produce other sufficient evidence of the proper denomination, and of the time when and the place where such ship or vessel was built, and also an exact account of the tonnage of such ship or vessel, and shall also make and subscribe a declaration before the person or persons hereinbefore authorized to grant such certificate that the ship or vessel for which such certificate is required is the same with that which is so described by the builder as aforesaid.

Certificate lost or mislaid.

19. If the certificate of registry of any ship or vessel shall be lost or mislaid, so that the same cannot be found or obtained for the use of such ship or vessel when needful, and proof thereof shall be made to the satisfaction of the registering officer of the port at which the ship is registered, such officer shall and may, where the certificate shall have been lost or mislaid, permit such ship or vessel to be registered *de novo*, and a certificate thereof to be granted. Provided always that if such ship or vessel be absent and far distant from the port to which she belongs, or by reason of the absence of the owner or owners, or of any other impediment, registry of the same cannot then be made in sufficient time, such registering officer shall and may grant a license for the present use of such ship or vessel, which license shall, for the time and to the extent specified therein, and no longer, be of the same force and virtue as a certificate of registry granted under this Act. Provided always that if the certificate of registry shall at any time afterwards be found, the same shall be forthwith delivered to the proper officers of customs to be cancelled, and that no illegal use be made of the same, in default whereof the original certificate and the renewed certificate and license shall thenceforth become utterly void, and any person wilfully detaining the certificate so required to be cancelled, or making any illegal use thereof, shall be liable, on conviction before any Justice, to a penalty not exceeding 5,000 rupees, recoverable as aforesaid.

Detention of certificate.

20. And whereas it is not proper that any person under any pretence whatever should detain the certificate of registry of any ship or vessel, or hold the same for any purpose

* The words quoted have been substituted by Act V. of 1883, s. 38.
† The words quoted have been added by Act VII. of 1891, s. 6 (2).

other than the lawful use and navigation of the ship or vessel for which it was granted, it is therefore hereby enacted that in case any person who shall have received or obtained, by any means or for any purpose whatever, the certificate of the registry of any such ship or vessel (whether such person shall claim to be the master or to be the owner or one of the owners of such ship or vessel, or not) shall wilfully detain and refuse to deliver up the same to the proper officers of customs, for the purposes of such ship or vessel as occasion shall require, or to the person or persons having the actual command, possession, and management of such ship or vessel as the ostensible and reputed master, or as the ostensible and reputed owner or owners thereof, it may and shall be lawful to and for any such last-mentioned person to make complaint on oath of such detainer and refusal to any Justice of the Peace residing near to the place where such detainer and refusal shall be, and on such complaint the said Justice shall and is hereby required, by warrant under his hand and seal, to cause the person so complained against to be brought before him to be examined touching such detainer and refusal, and if it shall appear to the said Justice on examination of such person or otherwise that the said certificate of registry is not lost or mislaid, but is wilfully detained by the said person, such person shall be subject, on conviction before such Justice, to a penalty not exceeding 1,000 rupees, recoverable as aforesaid, and the said Justice shall, and he is hereby required to, certify the aforesaid detainer, refusal, and conviction to the person or persons who granted such certificate of registry for such ship or vessel, who shall, on the terms and conditions of law being complied with, make registry of such ship or vessel *de novo*, and grant a certificate thereof conformably to law, notifying on the back of such certificate the ground upon which the ship or vessel was so registered *de novo*, and if the person who shall have detained and refused to deliver up such certificate of registry as aforesaid, or shall be verily believed to have detained the same, shall have absconded, so that the said warrant of the Justice cannot be executed upon him, and proof thereof shall be made to the satisfaction of the registering officer of the port at which the ship or vessel was registered, it shall be lawful for the said officer to permit such ship or vessel to be registered *de novo*, or otherwise, in his discretion, to grant a license for the present use of such ship or vessel in like manner as is hereinbefore provided in the case wherein the certificate of registry is lost or mislaid.

Registration *de novo*.

21. If any ship or vessel, after she shall have been registered pursuant to the directions of this Act, shall, in any manner whatever, be altered so as not to correspond with all the particulars contained in the certificate of her registry, or if any alteration shall take place in the ownership of any ship or vessel, or of any share or shares thereof, in such cases such ship or vessel shall be registered *de novo* in manner hereinbefore required as soon as she returns to the port to which she belongs, or to any other port within the territories of the East India Company, on failure whereof such ship or vessel shall be deemed to be a ship or vessel not duly registered, and any person making use of a certificate for the purposes of any ship or vessel which has been granted in respect of the same, after the same ought to have been registered *de novo*, shall be liable, on conviction before any Justice, to a penalty not exceeding 5,000 rupees, recoverable as aforesaid.

Testimony of registering officers.

22. And whereas great inconvenience may arise from the registering officers being served with subpœnas requiring them to bring with them and produce, on trials in Courts of law relative to the ownership of vessels, or otherwise, the declarations re-

Act X. of 1841.

quired to be taken by the owners thereof prior to the registering thereof, and the books of registry, or copies or extracts therefrom; and whereas it would tend much to the dispatch of business if the attendance of such registering officers with the same upon such trials were dispensed with, it is therefore hereby enacted that the registering officer at any port or place, and the person or persons acting for them respectively, shall, upon every reasonable request by any person or persons whomsoever, produce and exhibit, for his, her, or their inspection and examination, any declaration made by any such owner or owners, and also any register or entry in any book or books of registry required, and shall, upon every reasonable request by any person or persons whomsoever, permit him, her, or them to take a copy or copies, or an extract or extracts thereof respectively, and that the copy or copies of any such oath or declaration, registry or entry, shall, upon being proved to be true copy or copies thereof respectively, be allowed and received as evidence upon every trial at law, without the production of the original or originals, and without the testimony or attendance of any registering officer, or other person or persons acting for them respectively, in all cases, as fully and to all intents and purposes as such original or originals, if produced by any registering officer, or other person or persons acting for them, could or might legally be admitted or received in evidence.

False declaration.

Falsifying documents.

23. If any person or persons shall falsely make declaration to any of the matters hereinbefore required to be verified by declaration, or if any person or persons shall counterfeit, erase, alter, or falsify any certificate or other instrument in writing required or directed to be obtained, granted, or produced by this Act, or shall knowingly or wilfully make use of any certificate or other instrument so counterfeited, erased, altered, or falsified, or shall wilfully grant such certificate or other instrument in writing knowing it to be false, such person or persons shall, for every such offence, be liable, on conviction before a "Presidency Magistrate or a Magistrate of the first class,"* to a penalty not exceeding 10,000 rupees, "recoverable as aforesaid."† And if any such offence be committed by the owner of any ship or vessel, the certificate of such ship or vessel shall thenceforth be wholly void.

Ships of Native States.

24. When any ship or vessel duly registered under this Act, or sailing under the British navigation law, shall come to be owned by a Native Prince or State, or by any subject of such Native Prince or State as aforesaid, it shall be lawful for the Governor of Fort William in Bengal, or for the Governor in Council of any Presidency, to continue to such ship or vessel the privileges and advantages of a British ship for the purposes aforesaid by a pass to be‡ subscribed by a Secretary to Government, stating the voyage or voyages for which the same is to have effect, and the period for which it is to last; and it shall be lawful "for a Local Government"§ to issue a similar pass conferring the privileges and advantages of a British ship for the purposes aforesaid under this Act to any ship or vessel built within the dominions of such Native Prince or State, and owned by such Prince or State, or by any of their subjects, provided always that the ships belonging to Native Princes or States, or their subjects, in respect of which passes may be

* The words quoted have been substituted by Act V. of 1883, s. 38.

† The words quoted have been added by Act VII. of 1891, s. 7.

‡ Here the words, "issued under the Company's seal and," repealed by Act VII. of 1891, s. 8, have been omitted.

§ The words quoted have been substituted for the words "for the Governor of Fort William in Bengal, or the Governor in Council of any Presidency," by Act VII. of 1891, s. 8.

granted under this Act, shall, during the voyage or voyages, or the period for which any such pass shall be granted, be commanded by a subject of Her Majesty for whom the Governor-General in Council has power to legislate. Act X. of 1841.

Fees.

25. The fees demandable in respect of the granting any certificate or pass under this Act shall be fixed from time to time according to the directions of the Governor-General in Council, but so that the same shall not exceed the amount of fees now payable for registering or granting passes to ships or vessels at the different Presidencies.

Ports to which ships belong.

26. All ships or vessels registered under this Act shall be deemed to belong to the ports at which they shall be respectively registered. And all ships or vessels being registered, or in respect of which passes may have been granted which are unexpired at the time of passing this Act, shall, for the purpose of being deemed British ships, be deemed to belong to the ports at which they may have been registered, or when passes shall have been granted which are unexpired, at which such passes may have been respectively granted. And such ships or vessels built and owned as required by the Statute 3 & 4 Vic., c. 56, shall continue subject to all the rules in force at the respective Presidencies before the passing of this Act, touching the registering, measurement, granting passes, or other requisitions in respect of the same, and shall not be subject to the provisions of this Act, or any provisions of the statute law, a compliance with which may heretofore have been necessary in order that ships or vessels built and owned as aforesaid might be deemed British ships for the purposes of trade.

Definition of "Local Government."

27.* The expressions, "Local Government," "Local Governments of India," and "Government of the Presidency," as used in this Act, shall be deemed to include, and to have always included, every person who is a "Local Government" as defined in section 2, clause (10) of the General Clauses Act, 1868.

PROCLAMATION.

The Governor-General of India in Council hereby declares that all ships and vessels built or to be built within the limits of the Charter of the East India Company (as those limits are defined by the Statute 3rd & 4th of Queen Victoria, cap. 56, entitled "An Act further to regulate the trade of ships built and trading within the limits of the East India Company's Charter"), being owned by Her Majesty's subjects for whom the said Governor-General in Council has power to legislate, and belonging, under the provisions of the Act passed by the Governor-General in Council, No. X. of 1841, to any ports in the territories under the Government of the East India Company, shall be deemed to be British ships for all purposes of trade within the said limits, including the Cape of Good Hope, and the territories and dependencies thereof.

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* S. 27 has been inserted by Act VII. of 1891, s. 9.

Acts XII. and XIX. of 1841.

ACT XII. OF 1841.*

PASSED ON THE 19TH JULY 1841.

An Act for amending the Bengal Code in regard to sales of land for arrears of revenue.

1. [*Repeals.—Repealed by Act XIV. of 1870.*]

Interest and penalty abolished.

2.† There shall be no demand of interest or penalty upon any arrear of land-revenue.

ACT XIX. OF 1841.‡

PASSED ON THE 6TH SEPTEMBER 1841.

An Act for the protection of moveable and immoveable property against wrongful possession in cases of successions.

1. WHEREAS much inconvenience has been experienced where persons have died possessed of moveable and immoveable property, and the same has been taken upon pretend-

Preamble.

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* Section 2 of Act XII. of 1841 has been declared to apply to the whole of Bengal, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 6. It has also been declared in force by Reg. III. of 1872, s. 3, as amended by Reg. III. of 1886, s. 2, in the Santal Parganas, and under s. 3 of the Scheduled Districts Act (XIV. of 1874), in West Jalpaiguri, the Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum.

Act XII. of 1841 has been repealed in the territories to which the Assam Land and Revenue Regulation, 1886, extends.—See Reg. I. of 1886, s. 2.

† In s. 2, certain words and figures, repealed by Act XVI. of 1874, s. 1, have been omitted.

‡ This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts.—See Act XV. of 1874, s. 3.

It has been declared, under the Scheduled Districts Act, 1874, to be in force in the following Scheduled Districts, namely :—

The Taluqs of Bhadrachalam and Rakapilli and the Rampa Country	See *Gazette of India*	Oct. 4, 1879, Pt. I., p. 630.
Sindh	Ditto	Dec. 4, 1880, Pt. I., p. 672.
West Jalpaiguri	Ditto	Mar. 5, 1881, Pt. I., p. 74.
The District of Hazáribágh	Ditto	Oct. 22, 1881, Pt. I., p. 597.
Ditto Lohárdaga	Ditto	Oct. 22, 1881, Pt. I., p. 508.
Ditto Mánbhum	Ditto	Oct. 22, 1884, Pt. I., p. 509.
Pargana Dhálbhum in the District of Singbhum	Ditto	Oct. 22, 1881, Pt. I., p. 510.
The Jhánsi Division	Ditto	Aug. 31, 1878, Pt. I., p. 546.
The scheduled portion of the Mirzapur District	Ditto	May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	May 31, 1879, Pt. I., p. 382.
The Districts of Hazára, Peshawar, Kohat, Bannu, Dera Ismail Khán, and Dera Gházi Khán	Ditto	Jan. 30, 1886, Pt. I., p. 48.
The District of Lahaul	Ditto	May 1, 1886, Pt. I., p. 301.
The Scheduled Districts of the Central Provinces	Ditto	Dec. 13, 1879, Pt. I., p. 771.
Coorg	Ditto	Dec. 28, 1878, Pt. I., p. 747.
The District of Silhat	Ditto	Oct. 4, 1879, Pt. I., p. 631.

It has been extended, under the same Act, to the Scheduled Districts of Kumáon and Garhwál.—See *Gazette of India*, 4th November 1876, Pt. I., p. 606.

Certain formal words in ss. 2 to 19, which were repealed by Acts XVI. of 1874 and XII. of 1876, have been omitted.

ed claims of right by gift or succession; the difficulty of ascertaining the precise nature of the moveable property in such cases, the opportunities for misappropriating such property and also the profits of real property, the delays of a regular suit when vexatiously protracted, and the inability of heirs when out of possession to prosecute their rights, affording strong temptations for the employment of force or fraud in order to obtain possession. And whereas, from the above causes, the circumstance of actual possession, when taken upon a succession, does not afford an indication of rightful title equal to that of a decision by a Judge after hearing all parties in a summary suit, though such summary suit may not be sufficient to prevent a party removed from possession thereby from instituting a regular suit. And whereas such summary suit, though it will take away many of the temptations which exist for assuming wrongful possession upon a succession, will be too tardy a remedy for obviating them all, especially as regards moveable property. And whereas it may be expedient, prior to the determination of the summary suit, to appoint a curator to take charge of property upon a succession, where there is reason to apprehend danger of misappropriation, waste, or neglect, and where such appointment will, in the opinion of the authority making the same, be beneficial under all the circumstances of the case. And whereas it will be very inconvenient to interfere with successions to estates by the appointment of curators, or by summary suits, unless satisfactory grounds for such proceedings shall appear, and unless such proceedings shall be required by or on the behalf of parties giving satisfactory proof that they are likely to be materially prejudiced if left to the ordinary remedy of a regular suit :—

It is hereby enacted that whenever a person dies leaving property, moveable or immoveable, it shall be lawful for any person claiming a right by succession thereto, or to any portion thereof, to make application to the Judge of the Court of the district where any part of the property is found or situate for relief, either after actual possession has been taken by another person, or when forcible means of seizing possession are apprehended.

Person claiming right by succession to property of deceased may apply for relief against wrongful possession.

2. It shall be lawful for any agent, relative, or near friend, or for the Court of Wards in cases within their cognizance, in the event of any minor, disqualified, or absent person being entitled by succession to such property as aforesaid, to make the like application for relief.

Agent, &c., may apply in behalf of minor, &c.

3. The Judge to whom such application shall be made shall, in the first place, enquire by the solemn declaration of the complainant, and by witnesses and documents at his discretion, whether there be strong reasons for believing that the party in possession or taking forcible means for seizing possession has no lawful title, and that the applicant, or the person on whose behalf he applies, is really entitled and is likely to be materially prejudiced if left to the ordinary remedy of a regular suit, and that the application is made *bonâ fide*.

Enquiry made by Judge.

4. In case the Judge shall be satisfied of the existence of such strong ground of belief, but not otherwise, he shall cite the party complained of, and give notice of vacant or disturbed possession by publication, and, after the expiration of a reasonable time, shall determine summarily the right to possession (subject to regular suit as hereinafter

Procedure.

Determination of right.

Act XIX. of 1841.

mentioned), and shall deliver possession accordingly—provided always that the Judge shall have the power to appoint an officer who shall take an inventory of effects, and seal or otherwise secure the same, upon being applied to for the purpose, without delay, whether he shall have concluded the enquiry necessary for citing the party complained of or not.

Appointment of officer to secure effects.

5. In case it shall further appear upon such application and examination as aforesaid, that danger is to be apprehended of the misappropriation or waste of the property before the summary suit can be determined, and that the delay in obtaining security from the party in possession, or the insufficiency thereof, is likely to expose the party out of possession to considerable risk, provided he be the lawful owner; it shall be lawful for the Judge to appoint one or more curators with the powers hereinafter next mentioned, whose authority shall continue according to the terms of his or their respective appointments, and in no case beyond the determination of the summary suit and the confirmation or delivery of possession in consequence thereof. Provided always that, in the case of land, the Judge may delegate to the Collector or to his officer the powers of a curator, and also that every appointment of a curator in respect of any property be duly published.

Appointment of curator pending determination of suit.

6. The Judge shall have power to authorize such curator either to take possession of the property generally, or until security be given by the party in possession, or until inventories of the property shall have been made, or for any other purpose necessary for securing the property from misappropriation or waste by the party in possession. Provided always that it shall be entirely discretionary with the Judge whether he shall allow the party in possession to continue in such possession on giving security or not, and any continuance in possession shall be subject to such orders as the Judge may issue touching inventories, or the securing of deeds or other effects.

Powers conferrible on curator.

Discretion to allow party in possession to continue.

7. The Judge shall exact from the curator security for the faithful discharge of his trust, and for rendering satisfactory accounts of the same as hereinafter mentioned, and may authorize him to receive out of the property such remuneration as shall appear reasonable, but in no case exceeding five per centum on the personal property, and on the annual profits of the real property. All surplus monies realized by the curator shall be paid into Court, and invested in public securities for the benefit of the persons entitled thereto upon adjudication of the summary suit. Provided always that although security shall be required from the curator with all reasonable despatch, and, where it is practicable, shall be taken generally to answer all cases for which the person may be afterwards appointed curator, yet no delay in the taking of security shall prevent the Judge from immediately investing the curator with the powers of his office.

Curator to give security, and may receive remuneration.

Disposal of surplus.

Curator may be invested with powers before security is taken.

8. Where the estate of the deceased person shall consist wholly or in part of land paying revenue to Government in all matters regarding the propriety of citing the party in possession, of appointing a curator, and of nominating individuals to that appointment, the Judge shall demand a report from the

Report from Collector where estate includes revenue-paying land.

Collector, and the Collector is hereby required to furnish the same. In cases of urgency, the Judge may proceed, in the first instance, without such report, and he shall not be obliged to act in conformity thereto, but, in case of his acting otherwise than according to such report, he shall immediately forward a statement of his reasons to the Court of Sadr Díwání Adálat, and the Court of Sadr Díwání Adálat, if they shall be dissatisfied with such reasons, shall direct the Judge to proceed conformably to the report of the Collector. Act XIX. of 1841.

9. The curator shall be subject to all orders of the Judge regarding the institution or the defence of suits, and all suits may be instituted or defended in the name of the curator on behalf of the estate. Provided that an express authority shall be requisite in the sanad of the curator's appointment for the collection of debts or rents; but such express authority shall enable the curator to give a full acquittance for any sums of money received by virtue thereof.

Institution and defence of suits. Authority for collection of dues.

10. Pending the custody of the property by the curator, it shall be lawful for the Judge to make such allowances to parties having a *primâ-facie* right thereto, as upon a summary investigation of the rights and circumstances of the parties interested he shall consider that necessity may require, taking, at his discretion, security for the repayment thereof with interest, in case the party shall, upon the adjudication of the summary suit, appear not to be entitled thereto.

Allowances to apparent owners pending custody by curator.

11. The curator shall file monthly accounts in abstract, and at the period of every three months, if his administration last so long, and, upon giving up the possession of the property, file a detailed account of his administration to the satisfaction of the Judge.

Accounts to be filed by curator.

12. The accounts of any such curator as is above described shall be open to the inspection of all parties interested; and it shall be competent for any such interested party to appoint a separate person to keep a duplicate account of all receipts and payments by such curator. And if it be found that the accounts of any such curator are in arrear, or if they shall be erroneous or incomplete, or if the curator shall not produce them whenever he shall be ordered to do so by the Judge, he shall be liable to a fine not exceeding one thousand rupees for every such default.

Inspection of accounts, and right of interested party to keep duplicate.

Penalty for default as to accounts.

13. After the Judge of any district shall have appointed any curator, such appointment shall preclude the Judge of any other district within the same Presidency from appointing any other curator, provided the first appointment be in respect of the whole of the property of the deceased. But if the appointment be only in respect of a portion of the property of the deceased, this shall not preclude the appointment within the same Presidency of another curator in respect of the residue or any portion thereof; provided always that no Judge shall appoint a curator or entertain a summary suit in respect of property which is the subject of a summary suit previously instituted under this Act before another Judge; and provided further, that if two or more curators be appointed by different Judges for several parts of an estate, it shall be lawful for the Sadr Díwání Adálat to make such order as it shall think fit for the appointment of one curator of the whole property.

Bar to appointment of second curator for same property.

Curators of different parts of property.

Power to appoint sole curator.

Act XIX. of 1841.

Limitation of time for application for curator.

14. This Act shall not be put in force unless the aforesaid application to the Judge be made within six months of the decease of the proprietor whose property is claimed by right in succession.

Bar to enforcement of Act against public settlement, or legal directions by deceased.

15. This Act shall not be put in force to contravene any public act of settlement. Neither in cases in which the deceased proprietor shall have given legal directions for the possession of his property after his decease in the event of minority or otherwise, in opposition to such directions; but in every such case, so soon as the Judge having jurisdiction over the property of a deceased person shall be satisfied of the existence of such directions, he shall give effect thereto.

Court of Wards to be made curator in case of minors having property subject to its jurisdiction.

16. This Act shall not be put in force for the purpose of disturbing the possession of the Court of Wards of any Presidency; and in case a minor or other disqualified person whose property shall be subject to the Court of Wards shall be the party on whose behalf application is made under this Act, the Judge, if he determines to cite the party in possession, and also appoint a curator, shall invest the Court of Wards with the curatorship of the estate, pending the suit, without taking such security as aforesaid, and in case the minor or other disqualified person shall, upon the adjudication of the summary suit, appear to be entitled to the property, possession shall be delivered to the Court of Wards.

Saving of right to bring regular suit.

17. Nothing in this Act contained shall be any impediment to the bringing of a regular suit either by the party whose application may have been rejected before or after citing the party in possession, or by the party who may have been evicted from the possession under this Act.

Effect of decision on summary suit.

18. The decision of the Judge upon the summary suit under this Act shall have no other effect than that of settling the actual possession; but for this purpose it shall be final, not subject to any appeal or order for review.

Appointment of public curators.

19. It shall be lawful for the Governments of the respective Presidencies to appoint public curators for any district or number of districts. And the Judge having jurisdiction shall nominate such public curator or curators in all cases where the choice of a curator is left discretionary with him under the preceding provisions of this Act.

ACT XXIV. OF 1841.*

Act XXIV. of 1841.

PASSED ON THE 18TH OCTOBER 1841.

An Act for the greater uniformity of the Law administered by Her Majesty's Supreme Courts with that administered in England in regard to the undisposed residue of the Effects of Testators ; Illusory Appointments ; the transfer of the Estates by persons under disabilities pursuant to the direction of Courts, and the better management of the property of such persons, and other like matters.†

1. [*Repealed by Act VIII. of 1868.*]

2. The Statute 11 George IV. & 1 William IV., chapter 46, entitled "An Act to alter and amend the Law relating to Illusory Appointments,"‡ and the Statute 11 George IV. & 1 William IV., chapter 65, entitled "An Act for consolidating and amending the Law relating to property belonging to infants, femes-

Extension of 11 Geo. IV. & 1 Will. IV., caps. 46 and 65.

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* Certain words in ss. 2, 4, and 5, which were repealed by Act XVI. of 1874, have been omitted.

Act XXIV. of 1841 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts: The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum.—See *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504.

† The whole Act, except so far as it relates to illusory appointments and infants, and except s. 5, was repealed by Act VIII. of 1868.

‡ 11 GEO. IV. & 1 WILL. IV., CAP. XLVI.

An Act to alter and amend the Law relating to Illusory Appointments.

[*16th July 1830.*]

'Whereas, by deeds, wills, and other instruments, powers are frequently given to appoint real and personal property amongst several objects, in such manner that none of the objects can be excluded by the donee of the power from a share of such property ; And whereas appointments in exercise of such powers, whereby an unsubstantial, illusory, or nominal share of the property affected thereby is appointed to or left unappointed to devolve upon any one or more of the objects thereof, are invalid in equity, although the like appointments are good and binding at law ; And whereas considerable inconvenience hath arisen from the rule of equity relative to such appointments, and it is expedient that such appointments should be as valid in equity as at law :' Be it therefore enacted, &c. That no appointment which from and after the passing of this Act shall be made in exercise of any power or authority to appoint any property, real or personal, amongst several objects, shall be invalid or impeached in equity, on the ground that an unsubstantial, illusory, or nominal share only shall be thereby appointed to or left unappointed to devolve upon any one or more of the objects of such power ; but that every such appointment shall be valid and effectual in equity as well as at law, notwithstanding that any one or more of the objects shall not thereunder, or in default of such appointment, take more than an unsubstantial, illusory, or nominal share of the property subjected to such power.

Preamble.

Illusory appointments shall be valid in equity as well as at law.

2. Provided always, and be it further enacted, that nothing in this Act contained shall prejudice or affect any provision in any deed, will, or other instrument creating any such power as aforesaid, which shall declare the amount of the share or shares from which no object of the power shall be excluded.

Not to affect any deed which declares the amount of the share;

Act XXIV. of 1841.

covert, idiots, lunatics, and persons of unsound mind,"* shall be extended to the territories of the East India Company, as far as it is applicable to the same.

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3. Provided also, and be it further enacted and declared, that nothing in this Act contained shall be construed, deemed, or taken, at law or in equity, to give any other validity, force, or effect, to any appointment, than such appointment would have had if a substantial share of the property affected by the power had been thereby appointed to or left unappointed to devolve upon any object of such power.

Nor to give any other force to any appointment than the same would have had.

11 GEO. IV. & 1 WILL. IV., CAP. LXV.*

An Act for consolidating and amending the Law relating to Property belonging to Infants, Femes-covert, Idiots, Lunatics, and Persons of unsound Mind.

[*23rd July 1830.*]

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12. And be it further enacted that in all cases where any person being under the age of twenty-one years . . . . . is or shall become entitled to any lease or leases made or granted or to be made or granted for the life or lives of one or more person or persons, or for any term of years, either absolute or determinable upon the death of one or more person or persons, or otherwise, it shall be lawful for such person under the age of twenty-one years, or for his or her guardian or other person on his behalf, ... to apply to the Court of Chancery in *England*, the Courts of Equity of the Counties Palatine of Chester, Lancaster, and Durham, or the Courts of Great Session of the Principality of *Wales* respectively, as to land within their respective jurisdiction, by petition or motion in a summary way; and by the order and direction of the said Courts respectively such infant . . . . . or his guardian, or any person appointed in the place of such infant . . . . . by the said Courts respectively, shall and may be enabled from time to time, by deed or deeds, to surrender such lease or leases, and accept and take in the place and for the benefit of such person under the age of twenty-one years . . . . . one or more new lease or leases of the premises comprised in such lease surrendered by virtue of this Act, for and during such number of lives, or for such term or terms of years determinable upon such number of lives, or for such term or terms of years absolute, as was or were mentioned or contained in the lease or leases so surrendered at the making thereof respectively, or otherwise as the said Courts shall respectively direct.

Guardians of minors, &c., in order to the surrender and renewal of leases, may apply to the Court of Chancery, &c., and by order may surrender such leases, and renew the same, &c.

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14. And be it further enacted, that every sum of money and other consideration paid by any guardian . . . . . or other person as a fine, premium, or income, or in the nature of a fine, premium, or income, for the renewal of any such lease, and all reasonable charges incident thereto, shall be paid out of the estate or effects of the infant . . . . . for whose benefit the lease shall be renewed, or shall be a charge upon the leasehold premises, together with interest for the same, as the said Courts and Lord Chancellor, intrusted as aforesaid, respectively, shall direct and determine; and as to leases to be made upon surrenders by femes-covert, unless the fine or consideration of such lease and the reasonable charges shall be otherwise paid or secured, the same, together with interest, shall be a charge upon such leasehold premises, for the benefit of the person who shall advance the same.

Charges attending renewal to be charged on the estates as the Court shall direct.

15. And be it further enacted, that every lease to be renewed as aforesaid shall operate and be to the same uses, and be liable to the same trusts, charges, incumbrances, dispositions, devises, and conditions, as the lease to be from time to time surrendered as aforesaid was or would have been subject to in case such surrender had not been made.

New leases shall be to the same uses.

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* As to the repeal of 11 Geo. IV. and 1 Wm. IV., c. 65, in England, see 5 and 6 Wm. IV., c. 17, and 16 and 17 Vic., c. 70, s. 1, and 36 and 37 Vic., c. 91.

3. [*Repealed by Act XXVII. of 1868, s. 1.*]

4. [*Repealed by Act VIII. of 1868.*]

16. And be it further enacted, that where any person, being under the age of twenty-one years, ... might, in pursuance of any covenant or agreement, if not under disability, be compelled to renew any lease made or to be made for the life or lives of one or more person or persons, or for any term or number of years absolute or determinable on the death of one or more person or persons, it shall be lawful to and for such infant, or his guardian in the name of such infant, ... by the direction of the Court of Chancery, to be signified by an order to be made in a summary way upon the petition of such infant or his guardian . . . . . or of any person entitled to such renewal, from time to time to accept of a surrender of such lease, and to make and execute a new lease of the premises comprised in such lease, for and during such number of lives or for such term or terms determinable upon such number of lives, or for such term or terms of years absolute, as was or were mentioned in the lease so surrendered at the making thereof, or otherwise, as the Court by such order shall direct.

Infants empowered to grant renewals of leases.

17. And be it further enacted, that where any person, being an infant under the age of twenty-one years, is or shall be seized or possessed of or entitled to any land in fee or in tail, or to any leasehold land for an absolute interest, and it shall appear to the Court of Chancery to be for the benefit of such person that a lease or under-lease should be made of such estates for terms of years, for encouraging the erection of buildings thereon, or for repairing buildings actually being thereon, or the working of mines, or otherwise improving the same, or for farming or other purposes, it shall be lawful for such infant, or his guardian in the name of such infant, by the direction of the Court of Chancery, to be signified by an order to be made in a summary way upon the petition of such infant or his guardian, to make such lease of the land of such persons respectively, or any part thereof, according to his or her interest therein respectively, and to the nature of the tenure of such estates respectively, for such term or terms of years, and subject to such rents and covenants as the said Court of Chancery shall direct; but in no such case shall any fine or premium be taken, and in every such case the best rent that can be obtained, regard being had to the nature of the lease, shall be reserved upon such lease; and the leases, and covenants and provisions therein, shall be settled and approved of by a Master of the said Court, and a counterpart of every such lease shall be executed by the lessee or lessees therein to be named, and such counterparts shall be deposited for safe custody in the Master's office until such infant shall attain twenty-one, but with liberty to proper parties to have the use thereof, if required, in the meantime, for the purpose of enforcing any of the covenants therein contained: provided that no lease be made of the capital mansion house and the park and grounds respectively held therewith for any period exceeding the minority of any such infant.

Court of Chancery may authorize lease to be made of lands belonging to infants when it is to the benefit of the estate.

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25. 'And whereas by an Act passed in the first year of the reign of King George the First, intituled *An Act for making more effectual Her late Majesty's gracious Intentions for augmenting the Maintenance of the poor Clergy*, it was enacted that the agreements of guardians for and on behalf of infants or idiots under their guardianship should be as good and effectual to all intents and purposes as if the said infants or idiots had been of full age and of sound mind, and had themselves entered into such agreements; And whereas it is desirable that the said powers should be exercised under proper control, and that the same should be extended to all persons against whom a commission of lunacy shall have issued:' Be it further enacted that so much of the said Act of the first year of the reign of King George the First, as is hereinbefore recited, shall be and the same is hereby repealed.

So much of 1 Geo. I, c. 10, s. 9, as enacts that agreements of guardians shall bind infants, repealed.

26. And be it further enacted, that the guardian of any infant, with the approbation of the Court of Chancery, to be signified by an order to be made on the petition of such guardian in a summary way, may enter into any agreement for or on behalf of such infant which such guardian might have entered into by virtue of the said last recited Act, if the same had not been repealed.

Such agreements may be made by guardians with the approbation of the Court.

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Act XXVII. of 1841.

Saving of certain cases and proceedings.

5. This Act shall not be construed to affect any case which would not have been governed by English law as administered by Her Majesty's Supreme Courts previous to the passing thereof.*

ACT XXVII. OF 1841.†

PASSED ON THE 18TH OCTOBER 1841.

An Act for appropriating the unclaimed Dividends on Insolvent Estates.

Preamble.

1. WHEREAS pursuant to the orders of the Courts for the Relief of Insolvent Debtors at the several Presidencies, divers sums on account of unclaimed dividends on insolvent estates have from time to time been paid over by the assignees of such insolvent estates into the hands of the Accountant-General and Sub-Treasurer of the East India Company at such several Presidencies with the privity of the Accountant-General of the said Insolvent Courts to the credit of the persons named in the schedules as creditors of such insolvents respectively; and whereas it is expedient that, in the event of no claim being established to such unclaimed dividends or any part thereof within a reasonable time, such dividends should be distributed among such of the creditors of such insolvent estates as shall have established their claims against such estates respectively:

Distribution of dividends unclaimed for six years amongst creditors who have proved.

It is therefore enacted that it shall be lawful for the said Courts of Insolvent Debtors respectively, in the event of no claim being established to such dividends or any part thereof within six years after any dividend shall have been so paid over as aforesaid, to order the same to be repaid to such assignees, to be by them distributed among such of the creditors of such insolvent estates as shall have established their claims against such estates respectively, and to order such claims to be expunged from such schedules. Provided that this Act shall not affect the right of any party to be paid

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Court of Chancery or Exchequer may order dividends of stock belonging to infants to be applied for maintenance.

32. And be it further enacted that it shall be lawful for the Court of Chancery, by an order to be made on the petition of the guardian of any infant in whose name any stock shall be standing, or any sum of money, by virtue of any Act for paying off any stock, and who shall be beneficially entitled thereto, or if there shall be no guardian, by an order to be made in any cause depending in the said Court, to direct all or any part of the dividends due or to become due in respect of such stocks or any such sum of money, to be paid to any guardian of such infant, or to any other person according to the discretion of such Court, for the maintenance and education or otherwise for the benefit of such infant, such guardian or other person to whom such payment shall be directed to be made being named in the order directing such payment; and the receipt of such guardian or other person for such dividends or sum of money, or any part thereof, shall be as effectual as if such infant had attained the age of twenty-one years, and had signed and given the same.

* In s. 5 certain words, repealed by Act XII. of 1891, Sch. I., have been omitted.

† Act XXVII. of 1841 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts: The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum—See *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504.

such dividends out of any future assets, which may come to the hands of the assignees, together with any future dividends which may be declared on such insolvent estates respectively in the event of any such claim being afterwards established.

Publication of statements of unclaimed dividends before they are distributed.

2. No such unclaimed dividend shall at any time be distributed under this Act unless a statement of such unclaimed dividends be previously published in manner following: One year at least before making any such division as aforesaid a statement shall be published three times in the English language, and also in one or more native languages in the official gazettes of the respective Presidencies, which statement shall contain the names and descriptions as contained in the schedules of all parties in respect of whose claims dividends are reserved, together with the amount of such claims respectively, and shall specify whether any former dividend or dividends have been paid in respect thereof, and whether any proof shall have at any time been made of the debt whereby any dividend may have accrued. Provided always that this Act shall not authorize the distribution of any such dividend except where no person shall at any time have substantiated any claim to the debt in respect of which such dividend may have become due.

ACT IV. OF 1842.*

PASSED ON THE 22ND JULY 1842.

*For the better management of Boats and Catamarans in the Madras Roads, and for the amendment of certain Harbour Regulations.**

Preamble.

WHEREAS it is expedient to make Regulations for boats and catamarans employed in the Madras Roads, with a view to the better preservation of good order, the prevention of smuggling, and the general protection of life and property; and whereas certain rules now in force for the Harbour of Madras require amendment,—

Boats and catamarans plying in Madras Roads to be licensed and registered.

Penalty for default.

1.† No person, either as owner or servant, shall use or employ, or be employed in, any boat or catamaran to carry passengers, goods, or letters, to or from any ship or vessel lying in the Madras Roads and shore, unless such owners or owner of boats and catamarans shall have previously received a license, and unless the boat or catamaran which such owners or owner, servants or servant, shall so use, has been registered as hereinafter mentioned; and in case any person who has not received such license shall employ or be employed in a boat or catamaran for the purposes aforesaid, or such boat or catamaran shall not have been so registered, such person shall be liable to a fine not exceeding the sum of fifty rupees on conviction before a Justice of the Peace, as that Justice shall direct, and the boat or catamaran shall be liable to be seized by the orders of any Justice of the Peace and forfeited.

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* Act IX. of 1846 (Boats in Harbours, Madras) should be read with Act IV. of 1842.—See also Mad. Act IV. of 1869 (Boats, Madras Roads), Mad. Act II. of 1872 (amending Act IV. of 1842), and s. 7 of Mad. Act I. of 1881 (Madras Ports Police).

† Certain formal words, repealed by Act XVI. of 1874, have been omitted in this section, and also at the commencement of ss. 2 to 4, 6 to 19, and 21 to 24.

Act IV. of 1842.

Granting of licenses to owners.

2. Upon the Master Attendant being satisfied that any such boat is of the proper dimensions and capacity, and that the same is seaworthy, and of a proper quality for the purposes aforesaid, and upon the application of the owner of any such boat or of any catamaran, and upon such owner delivering to him a written paper signed by such owner, specifying his name, occupation, and place of residence, and the names and places of residence of all such boatmen or other persons as shall be employed by such owner in and about the navigation and management of such boat as particularly as may be, and also subscribing to a declaration in writing that he fully understands all the provisions of this Act and those contained in the subsidiary rules to the same Act, it shall and may be lawful, and the said Master Attendant is hereby required, to grant to such owner a license so to use the same, in which license (if of a boat) shall be expressed the dimensions, the number of passengers, or the quantity of goods which such boat shall be permitted to take and carry, and every such license shall also contain a number for such boat or catamaran, and the name or names, occupation or occupations, and place or places of residence of the owner or owners thereof, and the number of the servants or crew who shall be used or employed to row or navigate the same, and their names and places of residence respectively, all of which particulars shall be entered in a book or registry for that purpose to be kept by the Master Attendant;

Registration.

New license, on transfer of boat or share, to new owner.

and so often as the property in any such boat or catamaran, or any share of the same, shall be transferred, every owner of such boat or catamaran shall produce his license before the said Master Attendant, and such new owner shall also deliver to him a written paper signed by such new owner specifying his name, occupation, and place of residence, and the names and places of residence of all such boatmen or other persons as he shall employ, or propose to employ, in and about the navigation and management of such boat as particularly as may be, and shall also subscribe to a declaration in writing that he fully understands all the provisions of this Act, and those contained in the subsidiary rules to this Act, all which said particulars shall be duly entered by the said Master Attendant in a new registry to be made by him of such boat or catamaran, and thereupon a new license to use such boat or catamaran, expressing and containing the same particulars as are hereinbefore provided to be expressed in the original license, shall be granted by the said Master Attendant;

Notice of change of residence.

and whenever any such owner or owners, or any of the boatmen or other persons employed to manage or navigate any such boat or catamaran, shall change his or their place of abode, notice of such change of abode shall be delivered to the said Master Attendant by the said owner, in order that such new place of abode may be entered in the registry and license.

Penalty for default as to notice.

In wilful neglect or default of such notice of change of ownership or of the persons employed to row or navigate any such boat, or of his or their or any or either of their change of residence, for the space of six days after any such change of residence, the owner shall forfeit a sum not exceeding fifty rupees on conviction before a Justice of the Peace, as that Justice shall direct;

Fee for new registry and license.

and for every such new registration to be made by the said Master Attendant as aforesaid he shall be entitled to charge by way of fee the sum of one rupee, and for every new license thereof the sum of one rupee.

3. In order to enable the said Master Attendant to grant a correct license of the registry of every such boat previous to the registry of any boat requiring such license, the said Master Attendant or his Deputy shall, in the presence of the owner of every such boat or any other person duly appointed by such owner, cause each such boat to be surveyed and measured, and in case the same shall not, in the judgment of the said Master Attendant or his Deputy, be of the proper dimensions and capacity, and seaworthy, and of the proper quality for the purposes aforesaid, no registry shall be made, nor license be granted, until every such defect in the admeasurement, seaworthiness, and quality of the said boat, shall have been rectified by the owner thereof, and for every such survey and admeasurement a fee of three rupees shall be paid by the owner of any such boat to the said Master Attendant.

Survey and measurement for license.

Rejection of boats found unfit.

Fee for survey.

4. The said owner or owners of every such boat shall forthwith paint in black English figures, not less than six inches in length, upon a white ground, such white ground having a margin of at least three inches beyond the outermost part of the figures, on a conspicuous part of the bow on one side and of the quarter on the other, and in a legible and distinct manner from left to right, the number in such registry and license mentioned; and if any person shall fraudulently paint or counterfeit, or cause or permit to be painted or counterfeited, upon any boat, any figure not having been duly registered, every such person shall forfeit the sum of one hundred rupees, and every such boat shall also be forfeited.

Painting on boats of registry and license numbers.

Penalty for fraud.

5. And for the better prevention of fraud or omission in the painting the figures hereinbefore provided to be painted on all boats let out for hire, as well as for the better distinguishing and identifying such boats and catamarans as have been registered and licensed, it is hereby enacted that, so often as any registry is made, the said Master Attendant shall cause the number in the same to be cut or branded in the most common native characters in some part or parts of every such boat and catamaran;

Cutting or branding numbers in native character.

and if the owner or owners of any such boat shall neglect or refuse to keep painted, cut, or branded, any figure hereinbefore required to be painted, cut, or branded, on any such boat or catamaran, in a fair and legible condition, or if he shall paint, cut, or brand the same in a different manner or on a different part of such boat than is hereinbefore provided, or shall wilfully erase, obliterate, or in any way hide or conceal the same, or if the owner of any such boat or catamaran shall knowingly permit any such act to be done, he shall forfeit a sum not exceeding one hundred rupees on conviction before a Justice of the Peace as that Justice shall direct, and if any person not being such owner shall be guilty of, or shall assist in, any such incorrect painting, cutting, branding, erasure, or concealment, he shall forfeit one moiety of the penalty in this article imposed.

Penalty for neglect.

6. Every boat of the description and dimensions now in use (that is to say) not more than thirty-three feet in length, nine feet in breadth, and four feet four inches in depth, nor less than thirty feet in length, six feet in breadth, and three feet six inches in depth, which shall be so licensed and registered as aforesaid, shall be manned with not less than two steersmen, eight rowers, and one baler,

Manning of boats.

Act IV. of 1842.

and shall, if required, be obliged to carry at one time any number of passengers not exceeding fifteen, or any quantities of goods not exceeding the quantity mentioned in the Schedule A* hereunder written; and in case boats of different construction and dimension shall be licensed and registered, they shall be manned in such manner, and shall be obliged to carry such passengers or such a quantity of goods, as the Master Attendant shall direct and shall express in the license, under the penalty of fifty rupees.

Number of passengers.

Penalty.

7. If any boat be loaded with passengers or cargo beyond the number or quantity specified in the license granted to such boat, the tindal of such boat shall be liable to a fine not exceeding five rupees, on conviction before a Justice of the Peace, for every such surplus passenger and for every khandí weight of such cargo beyond such specified quantity, and the owner of such boat shall be liable to a fine of fifty rupees, on conviction before a Justice of the Peace, for every such surplus passenger or surplus khandí weight of cargo.

Penalty for carrying passengers or cargo in excess.

And every person other than the tindal or owner who shall be guilty either as principal or accessary of the like offence of overloading any boat shall be liable to a fine of ten rupees, on conviction before a Justice of the Peace, for every such surplus passenger or surplus khandí weight of cargo.

8. No boat or catamaran so licensed shall leave the shore before gun-fire in the morning nor after five o'clock in the afternoon, nor shall remain alongside any ship or vessel after six o'clock in the afternoon without leave from the Master Attendant or his Deputy, who shall be at liberty to prevent any boat or catamaran from putting off to or from the shore when in his judgment the doing so would be attended with danger, on which occasions the Master Attendant shall hoist at the mast head of his flagstaff the following flags, namely:—The white pendant with a red ball under a red and white chequered flag; and in case any person offend against this clause, he shall be liable, on conviction before a Justice of the Peace, to forfeit and pay a sum not greater than thirty rupees.

Limit as to time for plying.

Hoisting danger-signal.

Penalty.

9. On the fifteenth day of December in every year the owners of boats and catamarans which shall have been so licensed and registered as aforesaid shall expose them and their crews on the beach for the inspection of the Marine Board, and the Master Attendant shall, once in every month, or oftener, and as often as he may think necessary, require the owner of the said boats and catamarans, or any one or more of them, to expose them and their crews on the beach for his inspection;

Owners to expose boats and crews for inspection.

and in case any owner shall neglect or refuse so to expose a boat or catamaran belonging to him, and in case, on any boat or catamaran being so exposed, the Master Attendant shall deem it unseaworthy, or that its crew is in an inefficient state, he shall suspend the license granted in respect thereof, until the said boat or catamaran shall have been repaired and the crew rendered efficient to the satisfaction of the Master Attendant;

Suspension of license for default.

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* But now see Mad. Act II. of 1873, ss. 1, 2.

and it is hereby declared that, in case the owner of any such boat or catamaran shall refuse or neglect to make such necessary repairs to the same, and to render efficient the crew thereof, within one month after such inspection, the license shall altogether be withdrawn from such boat.

Withdrawal of license.

10.* The Governor in Council may, from time to time, by notification in the *Fort St. George Gazette*, direct at what places, or between what points on the shore, grain, timber, or any other class of goods, may be landed, and may, from time to time, by a like notification, modify such direction ; and in case any person shall land, or be engaged in attempting to land, any goods otherwise than as so directed, every such person shall be liable to pay, on conviction before a Magistrate or a Justice of the Peace, a sum not exceeding one hundred rupees as such Magistrate or Justice of the Peace may determine.

Governor in Council may appoint places on the beach for the landing of goods, &c.

Penalty.

11. All vessels other than those commonly known as native vessels or donies shall anchor in the South Roads, the north angle of the Fort being one point and the Master Attendant's flag-staff the other, and all vessels commonly known as native vessels or donies shall anchor in the North Roads, the north angle of the Custom-house being the southern, and the village of Royapuram the northern point, and the owner of any licensed boat or catamaran, on holding (except at the request of the Master Attendant) communication with a vessel which shall be anchored otherwise than as aforesaid, shall, on conviction thereof before a Justice of the Peace, be liable to pay a sum not greater than ten rupees as such Justice of the Peace shall direct.

Places for anchoring.

Penalty for infringement.

12. The owner or owners of all boats and catamarans kept for the purpose of being commonly let out for hire shall, when the same shall not be engaged in doing actual service for hire, by themselves or their agents give daily attendance at the boat-office from five A.M. until six P.M., so as to be ready to provide upon immediate notice their boats or catamarans for service or hire, and that for any neglect in so giving attendance (unless occasioned by sufficient excuse) such owners shall be punishable by a Justice of the Peace on conviction by a fine not exceeding ten rupees.

Attendance of owners at boat-office.

Penalty for neglect.

13. If any owner of a boat or catamaran so licensed, or any person deputed by him, shall demand a rate of hire beyond that which is sanctioned by Schedule B† under the several circumstances and restrictions therein provided for, he shall, on conviction before a Justice of the Peace, forfeit the sum of ten rupees, together with the amount of such hire.

Penalty for demanding hire in excess.

14. Any owner of a boat or catamaran so licensed, "and kept or employed for the purpose of being let out commonly on hire," or any person deputed by him, refusing to let on hire such boat or catamaran, for public or private use, and within the hours and in the terms specified in the Schedule B to this Act, without assigning such cause for his refusal as shall be deemed satisfactory or reasonable to the Justice of the

Penalty for refusing to hire.

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* S. 10 has been substituted by Mad. Act I. of 1887.

† See now Mad. Act IV. of 1869.

Act IV. of 1842.

Peace trying such offence, will, on conviction before a Justice of the Peace, be liable to the penalty of twenty rupees, and for a second refusal to a fine of one hundred rupees and to the forfeit of his license.

Penalty on boatmen for neglect of duty.

15. If any boatman or boatmen serving in any boat or catamaran kept and employed for the purpose of being let out commonly on hire to carry passengers, cargo, or letters, shall, by wilful neglect or desertion of his duty, cause any impediment to the service of any such boat or catamaran, he or they shall, for the first offence, be liable to receive corporal punishment not exceeding three dozen lashes on conviction before a Justice of the Peace, and if life shall have been thereby endangered, or in case of a second offence, he or they shall be committed to hard labour for a term not exceeding six months.

Keeping boats and catamarans for night service.

16. The owners of boats and catamarans, which are kept or employed for the purpose of being commonly let out for hire, shall keep and provide for service during the night, that is to say, from six o'clock in the afternoon until six o'clock in the morning, at least ten boats and four catamarans with their respective crews, according to a course of rotation to be specified by the Master Attendant on the first day of every current month, and to be notified in writing on some conspicuous part of his office as regards the particular nights for the attendance of particular boats and catamarans;

Penalty for neglect.

and every owner of any such boat or catamaran who shall fail to provide his boat or catamaran without assigning such excuse for such failure as shall be deemed satisfactory or reasonable to the Justice of the Peace trying such offence shall, if the owner of a boat, on conviction before a Justice of the Peace, be liable to a penalty of twenty rupees, and for a second offence to the penalty of fifty rupees, and, if the owner of a catamaran, be liable to the penalty of five rupees, and for a second offence to the penalty of ten rupees.

Boats to be kept dunnaged and seaworthy.

17. Every boat kept and employed for the purpose of being commonly let out for hire as aforesaid shall be kept well and completely dunnaged and seaworthy, and, in default thereof, the owner or owners of every such boat or boats shall, upon conviction before a Justice of the Peace, forfeit, for each instance of neglect,

Penalty for neglect.

the sum of five rupees, and if any goods or cargo shall have received injury or damage thereby, the sum of twenty rupees, besides and over and above any legal liability to compensate such loss; and if life shall have been endangered thereby, a sum not exceeding one hundred rupees, and also be liable at the discretion of such Justice to have his license for such boat revoked.

Penalty for communicating against rule with incoming ship.

18. If any communication by boat or catamaran is held with any ship or vessel in the offing, or beyond the limits of the anchorage before the Master Attendant's report-boat or catamaran has boarded such ship or vessel, the owner of such boat or catamaran shall forfeit the sum of twenty rupees, and if any attempt is made to hold such a communication without the permission of the Master Attendant, he will incur a penalty of ten rupees.

Power to board and search boats, cargo, and persons.

19. It shall be lawful for the Master Attendant or his Deputy, the Collector of Sea Customs or his Deputy, and all sitting Magistrates and qualified Justices of the Peace, or such person or persons as he or they shall, by warrant under their hands,

duly authorize for that purpose from time to time to go on board any boat or catamaran, and to search all parts of such boat or catamaran for prohibited or uncustomed or smuggled goods, and also to examine into all packages, boxes, or baggage of whatever description, within or upon such boat or catamaran, or landed therefrom, provided such Master Attendant or his Deputy, or other person to be appointed as aforesaid, shall have good reason to suppose that any such package, box, or baggage contains any smuggled or prohibited goods, and they shall likewise have power and authority to search any person or persons on board any such boat or catamaran, or who may have landed therefrom, provided such Master Attendant or his Deputy, or other person appointed as aforesaid, shall have good reason to suppose that such person or persons hath or have any uncustomed, smuggled, or prohibited goods secreted about his or her persons :

Search of females.

provided always that no female shall be searched by any other person than a female duly authorized for that purpose by the Collector of Customs ;

Punishment for resistance.

and it is hereby further enacted that if any person shall resist or impede any or either of the said parties hereinbefore authorized to go on board, examine, and search as hereinbefore provided in the execution of their duty, or in any manner prevent the performance of such duty, every such person shall be liable, according to the circumstances of the case and the quality of the party offending, upon conviction before a Justice of the Peace, to fine not exceeding one hundred rupees, or to imprisonment with or without hard labour on the roads or otherwise for a period not exceeding six months ; and in case any such offence be committed by any owner of a boat or catamaran, such owner shall likewise forfeit his license.

20. [*Repeal in part of the Marine Police Regulation.—Repealed by Act XVI. of 1874.*]

Powers under Regulation exercisable by Justices of the Peace.

21. The jurisdiction and authority ordained to be exercised by the Master Attendant and Deputy Master Attendant for the time being of the port of Madras jointly or severally as Justices of the Peace, by virtue of the hereinbefore-recited Regulation, shall and may be exercised (as regards such parts of the said Regulations not hereinbefore repealed) by any Justices of the Peace in and for the Presidency of Madras in like manner jointly or severally.

Persons subject to sections 11, 12, and 13.

22. Every person whatever who, either as owner or servant, shall use or employ, or be employed, in any boat or catamaran in the Madras Roads, shall be amenable to sections eleven, twelve, and thirteen of the above-recited Regulation.

Enactment applied to fixing copies of Regulation.

23. Section thirty-six of the above-recited Regulation shall hereafter apply to the fixing up at the offices therein mentioned copies of the same, omitting all other notice of those sections thereof which are by this Act repealed, save that the same are so repealed.

Powers of Justices of the Peace as to forfeitures and penalties.

24. All pecuniary forfeitures and penalties had or incurred under or against this Act shall and may be heard and determined by any Justice of the Peace of the town of Madras, who is hereby empowered and authorized to hear and determine the same, and to issue his summons or warrant for bringing the

Act IV. of 1842. party or parties complained of before him the said Justice, and upon his, her, or their appearance or contempt and default, to hear the parties, examine witnesses, and to give judgment or sentence according as in and by this Act is directed;

Recovery of penalties.

and it is hereby further declared that it shall be lawful for any Justice who may have adjudged any pecuniary penalty under the provisions of this Act to award and issue out a warrant or warrants under his or their hands and seals for the paying of such forfeitures and penalties as may be imposed or adjudged upon the goods and chattels of the offender, and cause sale to be made of the same if they shall not be redeemed within six days, rendering to the party the overplus, if any, after deducting the amount of such forfeiture or penalty, and the costs and charges attending the levying thereof, and in case sufficient distress shall not be found, and such forfeitures and penalties shall not be forthwith paid, it shall and may be lawful for the Justice as last aforesaid, and he is hereby authorized and required, by warrants or warrant, under his hand and seal, to cause such offender or offenders to be committed to prison, there to remain for any time not exceeding six months, unless such forfeitures and penalties and all reasonable charges shall be sooner paid and satisfied, and that all the said forfeitures, when paid and levied, shall, after deducting all necessary charges,

Appropriation.

and also a compensation not exceeding one-third to be settled and ascertained by the said Justice before whom the conviction may take place, and to be given to the officer or other persons giving information and prosecuting, to be applied and disposed of according to the directions of the Honourable the Governor in Council.

SCHEDULE A.

SCHEDULE OF ARTICLES COMPOSING A BOAT-LOAD.

[*Repealed by Mad. Act II. of 1873.*]

Act IV. of 1842.

SCHEDULE B.*

(See Sections 13 and 14.)

Maximum Rate of Boat and Catamaran Hire.

		Rs.	A.	P.
Accommodation Boats.				
Ordinary trip, south or north road ...	... per trip	3	8	0
Extra hire in and beyond 9 fathoms ...	... do.	1	8	0
Foul weather trip	... do.	6	0	0
Transhipment	... do.	1	0	0

Common Boats.		South Road.			North Road.		
Ordinary trip	... per trip	1	8	0	0	15	0
Ballast ditto	... do.	1	10	0	1	0	0
Ballast in and beyond 9 fathoms	... do.	2	10	0	2	0	0
Return trip	... do.	0	12	0	0	8	0
Return trip in and beyond 9 fathoms	... do.	1	8	0	0	15	0
Water ordinary trip ...	... do.	3	8	0	3	0	0
Water in and beyond 9 fathoms	... do.	4	3	0	3	2	6
Trip in and beyond 9 fathoms	... do.	2	12	0	2	2	0
Transhipment	... do.	0	15	0	0	15	0
Transhipment in and beyond 9 fathoms	... do.	1	14	3	1	14	3
Foul in and beyond 9 fathoms	... do.	4	3	0	3	2	6

Small Catamaran.				
Ordinary trip, south or north road ...	... per trip	0	5	0
Foul weather, or in or beyond 9 fathoms	... do.	0	10	0
Catamaran for rafting timber	... per day	1	0	0
Large Catamaran Hire.				
For landing or shipping an Europe cable of 13 to 16 inches ...		18	12	0
For ditto of 17 to 22 inches		28	8	0
For shipping chain-cables	per trip	18	12	0
For ditto an anchor from 14 to 29 cwt.		18	12	0
For ditto an anchor from 30 to 50 cwt.		28	12	0
For making a rope fast to an anchor under 12 cwt.		10	0	0
For ditto ditto above 12 and under 20 cwt.		20	0	0
For ditto ditto above 20 cwt.		35	0	0
Tarpaulin.				
Per trip		0	4	0
Water Casks.				
Per trip (4 Casks)		0	9	5

* Power to determine and vary the rates payable for the hire of boats and catamarans is now regulated by Mad. Act IV. of 1869.

Act IV. of 1842.

SCHEDULE B—(*concluded*).

Extra hire in addition to the regulated charges for Boats and Catamarans.	Accommodation Boat.			Common Boat.			Catamaran.		
South road trips between 6 and 8 p.m.	1	12	0	0	12	0	0	2	6
North road trips ditto ditto ...	1	12	0	0	7	6	0	2	6
South road trips between 8 p.m. and 5 a.m.	3	8	0	1	8	0	0	5	0
North road trips	3	8	0	0	15	0	0	5	0
Boats or catamarans detained alongside for every three hours during the day or night	3	8	0	1	8	0	0	5	0
Boats or catamarans employed between the Commissariat Granary and Parry and Co.'s Office ...	0	14	0	0	6	0	0	1	3
Ditto between Parry and Co.'s and the Tunnel	1	12	0	0	12	0	0	2	6
Ditto between the Tunnel and the Sea Gate	2	5	4	1	0	0	0	3	4
Ditto between the Sea Gate and the Marine Villa	4	10	8	2	0	0	0	6	8
Ditto between Marine Villa and Adyar	7	0	0	3	0	0	0	10	0
Ditto north of Royapuram ...	1	12	0	0	9	6	0	2	6
Ditto Trivatoor and Ennore ...	10	8	0	3	9	0	0	15	0
Beyond the limits of the anchorage...	1	8	0	1	8	0	0	5	0
Boats employed on Sundays. ...	1	8	0	0	9	0	0	2	0

N.B.—The ordinary period within which boats and catamarans shall be let on hire shall be between sunrise and sunset.

ACT V. OF 1843.*

PASSED ON THE 7TH APRIL 1843.

An Act for declaring and amending the Law regarding the condition of Slavery within the Territories of the East India Company.

Prohibition of sale of person or right to his labour on ground of slavery.

1. No public officer shall, in execution of any decree or order of Court, or for the enforcement of any demand of rent or revenue, sell or cause to be sold any person, or the right to the compulsory labour or services of any person, on the ground that such person is in a state of slavery.

Bar to enforcement of rights arising out of alleged property in person as a slave.

2 No rights arising out of an alleged property in the person and services of another as a slave shall be enforced by any Civil or Criminal Court or Magistrate within the territories of the East India Company.

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* Act V. of 1843 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

Sindh	See *Gazette of India*	Dec. 4, 1880, Pt. I., p. 672.
Aden	Ditto	June 28, 1879, Pt. I., p. 434.
West Jalpaiguri, the Western Dvárs, the Western Hills of Dárjiling, the Dárjiling Tarái, and the Damson Sub-division of the Dárjiling District.	Ditto	Mar. 5, 1881, Pt. I., p. 74.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	Oct. 22, 1881, Pt. I., p. 504.
The Jhánsí Division	Ditto	Aug. 31, 1878, Pt. I., p. 546.
The scheduled portion of the Mirzápur District	Ditto	May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	May 31, 1879, Pt. I., p. 382.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán	Ditto	Jan. 30, 1886, Pt. I., p. 48.
The District of Lahaul	Ditto	May 1, 1886, Pt. I., p. 301.
The Scheduled Districts of the Central Provinces	Ditto	Dec. 13, 1879, Pt. I., p. 771.
The District of Silhat	Ditto	Oct. 4, 1879, Pt. I., p. 631.
The Districts of Kámrup, Naugong, Darrang, Sibságar, Lakhimpur, Goálpára (excluding the Eastern Dvárs), and Káchár (excluding the North Káchár Hills)	Ditto	Aug. 24, 1878, Pt. I., p. 533.

It has been extended, under the same Act, to the following Scheduled Districts :—

The Districts of Kumáon and Garhwál	See *Gazette of India*	Nov. 4, 1876, Pt. I., p. 606.
The North-Western Provinces Tarái	Ditto	Sep. 23, 1876, Pt. I., p. 505.

Certain formal words in ss. 2, 3, and 4, which were repealed by Act XVI. of 1874, have been omitted.

Act VI. of 1844.

Bar to dispossession of property on ground of owner's slavery.

3. No person who may have acquired property by his own industry, or by the exercise of any art, calling, or profession, or by inheritance, assignment, gift, or bequest, shall be dispossessed of such property, or prevented from taking possession thereof, on the ground that such person, or that the person from whom the property may have been derived, was a slave.

Penal offence against alleged slave.

4. Any act which would be a penal offence if done to a free man shall be equally an offence if done to any person on the pretext of his being in a condition of slavery.

ACT VI. OF 1844.*

PASSED ON THE 16TH MARCH 1844.

An Act for the levy of inland customs-duties within the territories subject to the Government of Fort Saint George.†

1 to **5.** [*Repeal of all Madras Regulations imposing inland, transit, town duties, and certain sea-customs duties; saving of tolls; duties on imports into, and exports from, Madras ports.—Repealed by Act VIII. of 1868.*]

6. [*Duties on goods passing by land into or out of foreign European settlements on the line of coast within the Madras Presidency.—Repealed by Act XVI. of 1874.*]

7. [*Power of Governor-General in Council to declare territories of Native Chiefs to be foreign territory.—Repealed by Act XI. of 1869.*]

Customs chaukís for levy of customs-duties on certain goods.

Powers of officers at chaukís.

8.‡ For the levy of duties of customs as above provided on goods exported by land to, or imported by land from, such foreign territories, customs chaukís may be established at such places as may be determined by the said Governor in Council, and every officer at every such chaukí shall have power to detain goods passing into or out of any such foreign territory, and to examine and ascertain the quantities and kinds thereof; and such goods shall not be allowed to pass across the frontier-line out of or into the territory of the East India Company, until the owner or person in charge thereof shall produce and deliver a certificate showing that the customs-duty leviable thereupon has been paid in full.

Goods not to pass frontier-line without certificate.

Appointment of officers to collect duties and grant certificates of payment.

9. It shall be lawful for the said Governor in Council to appoint such officers as he may think fit to receive money on account of customs-duties, and grant certificates of the payment thereof, and [*that*] such a certificate being delivered to any chaukí-officer shall entitle goods to cross the frontier into or out of the East India Company's territories, provided that the goods correspond in description with the specification thereof contained in such cer-

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* Act VI. of 1844 has been declared to be in force in the whole of the Madras Presidency, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 4. So far as regards the Madras Presidency, the unrepealed provisions of this Act, relating to the levy of duties and to dutiable goods, apply to duties levied, and goods liable to duty, under s. 5, cl. *b*, of the Indian Tariff Act.—See Act XI. of 1882, s. 8.

† In the title certain words, repealed by Act XII. of 1891, Sch. I., have been omitted.

‡ Certain formal words, repealed by Act XVI. of 1874, have been omitted in this section, and also in ss. 9 to 15.

tificate, and that the certificate show the entire amount of duty leviable on those goods to have been duly paid; and if upon examination the goods brought to any chaukí be found not to correspond with the specification entered in the certificate presented with the same, the difference shall be noted on the face of the certificate, and if the payment of duty certified therein shall not cover the entire amount of duty leviable on the goods as ascertained at such examination, the goods shall be detained until a further certificate for the difference shall be produced.

Procedure when goods found not to correspond with certificate.

10. The said Governor in Council shall give public notice in the official Gazette of the Presidency of Fort Saint George of the appointment of every officer appointed to receive customs-duties on goods crossing the land-frontier of the said foreign territories, and the officers so appointed shall, on receipt of money tendered as customs-duty, be bound to give to any merchant or other person applying for the same a certificate of payment, and to enter therein the specification of goods, with the values and description thereof, according to the statement furnished by the person so applying, provided only that the proper duty leviable thereupon, according to the descriptions and values stated, be covered by the payment made.

Appointments of officers to be notified.

Officers bound to grant certificates on receipt of proper duty.

11. No certificate shall be received at any chaukí that shall bear date more than thirty days before the date when the goods arrived at the chaukí: Provided, however, that any person who has taken out a certificate from any authorized receiver of customs-duties shall, at any time within the said period of thirty days, on satisfying such receiver that such certificate has not been used, and on delivering up the original, be entitled to receive a renewed certificate, with a fresh date, without further payment of duty.

Ante-dated certificates not received.

When fresh certificate to be granted.

12. It shall be lawful for the said Governor in Council to prescribe by public notice in the official Gazette of the Presidency of Fort Saint George by what routes goods shall be allowed to pass into or out of any such foreign territory *as is described in sections 6 and 7 of this Act*;* and after such notice shall be given, goods which may be brought to any chaukí established on other routes or passes than those so prescribed shall, if provided with a certificate, be sent back, and, if not provided with a certificate, shall be detained, and shall be liable to confiscation by the Collector of Customs, unless the person in charge thereof shall be able to satisfy the said Collector that his carrying them by that route was from ignorance or accident.

Notification of routes by which goods may cross frontier.

Goods thereafter brought by other routes liable to detention or confiscation.

13. Goods which may be passed, or which an attempt may be made to pass, across any frontier guarded by chaukís, between sunset and sunrise, or in a clandestine manner, shall be seized and confiscated.

Goods crossing clandestinely to be confiscated.

14. Any chaukí-officer who shall permit goods to pass across the frontier when not covered by a sufficient certificate, or who shall permit goods to pass by any prohibited route, shall be liable, on conviction before the Collector of

Penalty for permitting goods to cross without certificate, or by prohibited route.

* *I. e.* (1) foreign European Settlements situated on the line of coast within the limits of the Presidency of Fort Saint George, and (2) territory of certain Native Chiefs not subject to the jurisdiction of the Courts and Civil Authorities of that Presidency, and declared, by the Governor in Council by notice in the Gazette, to be foreign territory.

Act XIX. of 1844.

Customs, to imprisonment for a term not exceeding six months, and to a fine not exceeding five hundred rupees, commutable, if not paid, to imprisonment for a further period of six months.

Penalty for vexatiously injuring or wrongfully detaining goods.

15. If any chaukí-officer shall needlessly and vexatiously injure goods under the pretence of examination, or in the course of his examination, or shall wrongfully detain goods for which there shall be produced a sufficient certificate, such officer shall, on conviction before the Collector of Customs, or before any Magistrate or Joint Magistrate, be liable to imprisonment for a term not exceeding six months, and to fine not exceeding five hundred rupees, commutable, if not paid, to imprisonment for a further period of six months.

16. [*Duty on goods imported by sea from foreign European settlements and certain Native States.—Repealed by Act XI. of 1869.*]

17 to **41.** [*No dutiable goods to be exempted except under special order of Government; certain provisos; valuation of goods; goods to be landed only at gazetted ports; manifests of cargo; penalties; obligation to receive customs-officers on board; goods landed to be covered by boat-notes; liability to confiscation in certain cases.—Repealed by Act VI. of 1863, s. 2, except so far as they relate to duties leviable on salt and opium.**]

42. [*Repeal.—Repealed by Act VIII. of 1868.*]

43. [*Price of salt in Madras.—Repealed by Act XVIII. of 1877.*]

46 to **68.** [*Periods allowed for loading and discharging cargoes—Port-clearances—Duty on re-landed cargoes—Rules regarding coasting and country craft—Transhipped goods—Powers of Collector of Customs—Customs officers amenable in certain cases to Civil Courts—Penalties—Powers of Governor in Council.—Repealed by Act VI. of 1863, s. 2.*]

SCHEDULES A AND B.

[*Repealed by Act XIII. of 1871.*]

Schedules A, B, and C, were repealed by Act VIII. of 1868; Schedules A and B were again repealed by Act XIII. of 1871.

ACT XIX. OF 1844.†

PASSED ON THE 14TH SEPTEMBER 1844.

An Act for abolishing town-duties and mukáts, and all taxes upon trades and professions within the Presidency of Bombay.

Abolition of town-duties and taxes.

IT is hereby enacted that from the first day of October 1844, all town-duties, kasab, veros, muhtarafas, baluteh taxes, and cesses of every kind on trades or professions, under whatsoever name levied within the Presidency of Bombay, and not forming a part of the land-revenue, shall be abolished.

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* As to these duties, see Act XI. of 1882, Sch. II., Nos. 3 and 4, and Act XII. of 1882.

† Act XIX. of 1844 has been declared to apply to the whole of the Bombay Presidency, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 5.

ACT I. OF 1846.*

Act I. of 1846.

PASSED ON THE 7TH JANUARY 1846.

An Act for amending the Law regarding the appointment and remuneration of Pleaders in the Courts of the East India Company.

1—3. [*Repealed by Act XVI. of 1874.*]

4.† The office of pleader in the Courts of the East India Company shall be open to all persons of whatever nation or religion, provided that no person shall be admitted a pleader in any of those Courts unless he have obtained a certificate in such manner as shall be directed by the Sadr Courts that he is of good character and duly qualified for the office, any law or regulation to the contrary notwithstanding.

Office of pleader open to all persons if duly certificated.

5. Provided that every barrister of any of Her Majesty's Courts of Justice in India shall be entitled as such to plead in any of the Sadr Courts of the East India Company, subject however to all the rules in force in the said Sadr Courts applicable to pleaders, whether relating to the language in which the Court is to be addressed or to any other matter.

Right of barristers to plead in all Courts.

6.‡ Section 52, Regulation II., 1827, of the Bombay Code, shall cease to be enforced, excepting for the purpose specified in section 7 of this Act.

Enactment to cease to have force, except for specified purpose.

7.§ Parties employing authorized pleaders in the said Courts shall be at liberty to settle with them by private agreement the remuneration to be paid for their professional services, and it shall not be necessary to specify such agreement in the vakálatnáma; provided that when costs are awarded to a party in any regular suit, original or appeal, decided on the merits, against another party, the amount to be paid on account of fees of pleaders shall be calculated according to the rules contained in "the section of the Regulation" specified in section 6 of this Act, and that when costs are awarded in other cases, the amount to be paid on account of such fees shall be one-fourth of what it would have been in a regular suit decided on its merits.

Private agreement between parties and pleaders.

Calculation of pleaders' fees out of costs awarded in regular suit.

In other cases.

8. Private agreements between parties and their pleaders respecting the remuneration to be paid for professional services shall not be enforced otherwise than by a regular suit.

Enforcement of private agreements.

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* Act I. of 1846 has been declared to be in force in the Madras and Bombay Presidencies, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), ss. 4, 5.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the Scheduled District of Sindh.—See *Gazette of India*, Dec. 4, 1880, Part I., p. 672.

It is repealed in places to which the Pleaders, Mukhtars, and Revenue Agents Act (XX. of 1865) is extended (see Act XX. of 1865, s. 3), and in places to which the Legal Practitioners Act (XVIII. of 1879) applies (see Act IX. of 1884, s. 9).

† S. 4 has been modified by Act XX. of 1853. Certain formal words in ss. 4 to 13 (both inclusive), which were repealed by Acts XVI. of 1874 and XII. of 1876, have been omitted.

‡ Here certain words, repealed by Act XII. of 1891, Sch. I., have been omitted.

§ In s. 7, the words quoted have been substituted for the words "the sections of Regulations" by Act XII. of 1891, Sch. I.

Act IX. of 1846.

Partial repeal of enactments.

9.* Persons taking opinions from authorized pleaders shall be at liberty to settle with them by private agreement the remuneration to be paid for such opinions.

Power of Sadr Amín to fine pleader.

10. Whenever a pleader has rendered himself liable to a fine in the Court of a Principal Sadr Amín or Sadr Amín, it shall be competent to such Principal Sadr Amín or Sadr Amín to impose such fine; provided that an appeal from all orders imposing such fines shall lie to the Zila or City Judge, whose decision thereon shall be final.

Appeal.

Rules applied.

11. The rules applicable to pleaders in the Courts of the Zila and City Judges shall henceforth be applicable, so far as they are capable of application, to pleaders in the Munsifs' Courts.

Power of Munsif to fine pleader.

12. Whenever a pleader has conducted himself in such a manner in the Court of a Munsif as would have rendered him liable to a fine if he had so conducted himself in the Court of a Zila or City Judge, it shall be competent to such Munsif to impose such fine; provided that an appeal from all orders imposing such fines shall lie to the Zila or City Judge, whose decision thereon shall be final.

Appeal.

Act not to affect certain vakíls.

13. Nothing in this Act contained shall apply to vakíls who may be employed in the Courts of the Village Munsifs, or before the village or district panchâyats, or before the Collectors of Zilas, under the provisions of Regulations IV., V., VII., and XII., 1816, of the Madras Code.

ACT IX. OF 1846.†

PASSED ON THE 5TH DECEMBER 1846.

An Act for authorizing the Government of Fort St. George to provide Regulations for the several ports and places of anchorage within the territories subject thereto.

Preamble.

WHEREAS Act IV. of 1842, entitled an Act for the better management of boats and catamarans in the Madras Roads, and for the amendment of certain harbour-regulations, has been found by experience to operate beneficially; and whereas it is expedien, that regulations similar in principle to the provisions contained in the sai d Act but varying in detail if local circumstances require such variation, should be provided for all ports and other places of anchorage within the territories subt ject to the Government of the Presidency of Fort St. George:

Power to make regulations for management of boats, &c.

1. It is therefore hereby enacted that the Governor in Council of Fort St. George may, from time to time, make, in respect of each port or other place of anchorage within the territories subject to the Government of the said Presidency, such regulations for the management of boats and catamarans and such other matters as are provided for by the said Act IV. of 1842 in respect of the Madras roads as to them shall seem expedient, being similar in

* In s. 9, certain words, repealed by Act XII. of 1876, have been omitted.

† Act IX. of 1846 has been declared to be in force in the whole of the Madras Presidency, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 4.—See Mad. Act I. of 1881, ss. 2, 7.

principle to the provisions contained in the said Act, but varying in detail, if local circumstances require such variation. And all such regulations shall be submitted for confirmation or disallowance to the Governor-General of India in Council, and every such regulation shall have the force of law after it shall have been confirmed by the Governor-General of India in Council.

Confirmation of regulations.

ACT XI. OF 1846.*

PASSED ON THE 12TH DECEMBER 1846.

An Act for the exemption of certain territory in the Province of Khándesh from the operation of the general Regulations.

WHEREAS it has been deemed expedient to exempt from the jurisdiction of the Civil and Criminal Courts of the Bombay Presidency certain portions of the parganas of Nandurbár, Sultánpur, and Kukarmunda, in the Province of Khándesh :

Preamble.

1. It is hereby enacted that from and after the first day of February 1847, so much of Appendix A of Regulation XXIX. of 1827 of the Bombay Code as declares the villages contained in the schedule annexed to this Act, and the lands attached thereto (being parts of the parganas of Nandurbár, Sultánpur, and Kukarmunda, in the Province of Khándesh), subject to the Regulations established for the administration of civil and criminal justice in the Bombay Presidency, be repealed.

Repeal, in part, of Bombay Regulation XXIX. of 1827, Appendix A.

2. From and after the said day, the administration of civil and criminal justice, the superintendence of the police, and the collection and superintendence of the revenues of every description within the said portions of territory, shall vest in such Agent to the Governor of Bombay as shall be appointed by the Governor of Bombay in Council, and shall be exercised by the said Agent with the aid of such assistants as may be appointed by the said Governor in Council.

Administration of justice and superintendence of police and revenues vested in Agent.

3. It shall be competent to the said Governor in Council, by an order in Council, to prescribe such rules as he may deem proper for the guidance of the Agent aforesaid and of all the officers subordinate to his control and authority, and to determine to what extent the decision of the Agent in civil suits shall be final, and in what suits an appeal shall lie to the Sadr Díwání Adálat, and to define the authority to be exercised by the Agent in criminal trials, and what cases he shall submit to the decision of the Sadr Faujdári Adálat.

Power to prescribe rules for agent and subordinates.

4. Upon the receipt of any criminal trials referred by the Agent under the rules which may be hereafter prescribed by the Governor in Council, the Sadr Faujdári Adálat shall proceed to pass a final judgment, or such other order as may, after mature consideration, seem to the Court requisite and proper, in the same manner as if the trial had been sent up in ordinary course from a Sessions Judge.

Procedure of Sadr Faujdári Adálat in criminal trials referred by Agent.

5. Upon the receipt of any appeal from a decree of the Agent duly prepared under the rules to be prescribed as aforesaid, the Court of Sadr Díwání Adálat shall proceed to try and determine it in the same manner as appeals from the Zila Courts.

And of Sadr Díwání Adálat in appeals.

* Repealed (except as to the Scheduled Districts, Bombay) by Act XIV. of 1874.

Act XI of 1846.

SCHEDULE.

List of villages belonging to the Seven Mevás Chieftains in the Province of Khándesh comprehended in the parganás of Nandurbár, Sultánpur, and Kukarmunda.

Names of Chiefs.	Inhabited.	Uninhabited.
1 Ganpat Sing Valad Chandrasing, Rána of Budhával.	Dekáti. Halálpur. Budhávali. Khushgawhán. Ashté. Khár. Mendvad. Jámligura. Válheri. Budhával. Lobábháni. Somával Buzurg. Mathával. Shervi. Ekdhor. Relápára.	Navágaom. Somával Khurd. Bho Bhát. Pratáppur. Navalpur. Rájvira. Kalambi Vihír. Ghoghát. Ramgad. Pethápur.
2 Umed Valad Lakshman Párvi of Káti.	Káti. Bhagdori. Vanva. Jámna. Bír. Sámar. Kajál. Velkhuri. Mogribár. Gorápibár. Nalvanbára. Jágti. Aruti. Kivari. Chápri. Pándhrimáti. Pimparkhuta. Surgas. Bijalgawhán. Bálaghát. Vehagi. Chanvái. Bálkra. Gojíbára. Ogháni. Danái. Surpánvávi. Sari. Kankál. Koili Vihír. Sonáchi párdi. Kákarpára. Ghatváni. Rájmohi.	Khatkuva. Báhmangaon. Gallotta Khurd. Akal Kuva. Horápára. Ankushi Vihír. Gawháni. Pevti. Mojra. Dhánkbári. Kotli. Mahán Dhobripita. Taláv. Chikhli. Ghora Devi. Kuva. Kolvi. Kolvichmál. Nendvan. Pátpára. Kalmanda. Varphalli. Bhatári. Pok Khára.

Names of Chiefs.	Inhabited.	Uninhabited.
2 Umed Valad Lakshman Párvi of Káti—(*continued*).	Khatás Khari. Khái. Hiráni. Dáb. Dáhel. Muríra. Vádi. Kadváli. Gadváni. Bokhári. Polgawhán. Umti. Veri. Pimparpán. Máichámál. Mogri. Bahmani. Somkhári. Rás. Ghattala. Mogra. Mulgi. Bharkund. Veli. Umrigawhán. Jámli. Bhágrápán. Umla. Rául K. Sendri. Kukripádár. Kajáni. Honákhámb. Gallota Buzurg. Navágaon. Gangápur. Kevára Mohi.	
3 Umed Valad Pácha Párvi of Nál.	Gulyámba.	Nál. Virpur. Navágaon. Sáne Vihír. Jiri Sávar. Tanak Moli.
4 Bikna Valad Raila Párvi of Singpur.	Singpur Buzurg. Singpur Khurd.	Babhalpur.

Act XI. of 1846.

Names of Chiefs.	Inhabited.	Uninhabited.
5 Khátia Valad Nána Valvi Bhil of Gawháli.	Gawháli. Bár. Pihrido. Kákriámba. Hátvaryávar. Morki. Nágar Moti. Rájkurá. Ráisingpura. Udan. Bherivoa.	Pándhripára. Dodav. Lálpur. Koákher. Karkhund. Bakhtár. Pála. Bhuyaváv. Kákarkhor. Rájni. Khurd Mahukhári. Kuvarváv. Tálámba. Varkund. Kumri. Khargia Morámba. Borigawhán. Bhometi. Kálámba. Phulvádi. Kelvan. Bhoi Karaj. Dorki. Jámva. Gotpára. Jujav. Ukalsár. Rájnibára. Ambábár. Borki Dokhi. Mathá Kund. Gagriámba. Lálbhardi. Junátána. Morámba. Kádli. Gondvan. Ghoda. Mándára Khurd. Mándára Buzurg. Bhogvad. Guji. Mahukhári Buzurg. Vájpur. Tálámba. Jámna. Shindgawhán. Kániámba. Mográpána. Kalevarkhurd. Rámpura. Kunda. Junvan. Bugniámba. Shingvan. Kániámba.

Names of Chiefs.	Inhabited.	Uninhabited.
5 Khátia Valad Nána Valvi Bhil of Gawháli—(*continued*).		Kondvápára. Kánápára. Kotára. Párdi. Kevribár. Bhuera. Gawhán. Korádevi. Jámkhut. Amligowhán. Máthámba. Mátha Mogar. Máta Tána. Udapur.
6 Kuvar Vasáva Valad Jiva Vasáva Bhil of Chikhli.	Chikhli. Jhiribera. Pátipára. Chátupára. Ránepura. Khápar. Gangtha. Lagri. Jávli. Koliváda. Palásváda. Umán.	Jhápa Amli. Khánora. Koktipára. Khayerpára. Chánpur. Umráni. Vadgaon. Choti Raráli. Bráhmangaom. Kávligawhán. Bholvad. Dhábra. Mendi. Kenvada. Khekvad. Dábriámba. Augat. Rethi. Cháptipára. Rájnivád. Umáni. Navágaon. Naken Sevri. Nevri. Umjia.
7 Rája Valad Veslia Párvi.		Sojdán. Navalpura.

Act IX. of 1847.

	Names of Chieftains.	Inhabited.	Uninhabited.	Total Villages.
1	Ganpat Sing, Valad Chandra Sing Rána of Budhával	16	10	26
2	Umed Valad Lakshman Párvi of Káti	71	25	96
3	Umed Valad Pácha Párvi of Nál ...	1	6	7
4	Bikna Valad Ráila Párvi of Singpur ...	2	1	3
5	Khátia Valad Nána Valvi Bhil of Gawháli	11	70	81
6	Kuvar Vasáva Valad Jiva Bhil of Chikhli	12	25	37
7	Rája Valad Veslia Párvi	...	2	2
	Total ...	113	139	252

ACT IX. OF 1847.

PASSED ON THE 8TH MAY 1847.

*An Act regarding the assessment of lands gained from the sea or from rivers by alluvion or dereliction within the Provinces of Bengal, Bihár, and Orissa.**

1. IT is hereby enacted that such parts of the Regulations of the Bengal Code as establish tribunals and prescribe rules of procedure for investigations regarding the liability to assessment of lands gained from the sea or from rivers by alluvion or dereliction, or regarding the right of Government to the ownership thereof, shall, from the date of the passing of this Act, cease to have effect within the provinces of Bengal, Bihár, and Orissa;† and that no measures shall hereafter be taken for the assessment of such lands, or for the assertion of the right of Government to the ownership thereof, except under the provisions of this Act.

Repeal of enactments.

Investigations as to alluvial lands.

2. The expression "Province of Orissa" in this Act shall be taken to mean only so much of the Province of Orissa as is subject to the Government of Bengal.

"Province of Orissa" defined.

3. Within the said provinces it shall be lawful for the Government of Bengal, in all districts or parts of districts of which a revenue-survey may have been or may hereafter be completed and approved by Government, to direct from time to time, whenever ten years from the approval of any such survey shall have expired, a new survey of lands on the banks of rivers and on the shores of the sea, in order to ascertain the changes that may have taken place since the date of the last previous survey, and to cause new maps to be made according to such new survey.

Power to direct new survey of riparian lands.

* Act IX. of 1847 has been declared to apply to the whole of Bengal, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 6. It has also been declared in force by Reg. III. of 1872, s. 3, as amended by Reg. III. of 1886, s. 2, in the Sántál Parganas, and under s. 3 of the Scheduled Districts Act (XIV. of 1874), in West Jalpaiguri, the Districts of Hazáribágh, Lohárdaga, and Mánbhum, Pargana Dhálbhum, and the Kolhán.

The Act has been repealed in the territories to which the Assam Land and Revenue Regulation, 1886, extends.

† Here certain words, repealed by Act XII. of 1891, Sch. I., have been omitted.

4. The approval of the revenue-surveys of districts or parts of districts which may be hereafter surveyed shall be deemed to have taken place on such day as may be specified as the day of such approval in the Calcutta Government Gazette.

Date of approval of surveys.

5. Whenever, on inspection of any such new map, it shall appear to the local Revenue-authorities that land has been washed away from or lost to any estate paying revenue directly to Government, they shall, without loss of time, make a deduction from the sadr jama of the said estate equal to so much of the whole sadr jama of the estate as bears to the whole the same proportion as the mufassal jama of the land lost bears to the mufassal jama of the whole estate; but if the mufassal jama of the whole estate or of the land lost cannot be ascertained to the satisfaction of the local Revenue-authorities, then the said local Revenue-authorities shall make a deduction from the sadr jama of the estate equal to so much of the whole sadr jama of the estate as bears to the whole the same proportion as the land lost bears to the whole estate. And this deduction, with the reasons thereof, shall be forthwith reported by the local Revenue-authorities for the information and orders of the Sadr Board of Revenue, whose orders thereupon shall be final.

Deduction from jama of estates from which lands have been washed away.

6. Whenever, on inspection of any such new map, it shall appear to the local Revenue-authorities that land has been added to any estate paying revenue directly to Government, they shall, without delay, assess the same with a revenue payable to Government according to the rules in force for assessing alluvial increments, and shall report their proceedings forthwith to the Sadr Board of Revenue, whose orders thereupon shall be final.

Assessment of increments to revenue-paying estates.

7. [*Repealed by Bengal Act IV. of 1868.*]

8. [*Repealed by Act XIV. of 1870.*]

9. Except as regards the proprietary right to islands, no suit or action in any Court of Justice shall lie against the Government or any of its officers on account of anything done in good faith in the exercise of the powers conferred by this Act.

Indemnity-clause.

Act XX. of 1847.

ACT XX. OF 1847.*

PASSED ON THE 18TH DECEMBER 1847.

An Act for the encouragement of learning in the Territories subject to the government of the East India Company, by defining and providing for the enforcement of the right called Copyright therein.

Preamble.

WHEREAS doubts may exist whether the right called copyright can be enforced by the common law of England in those parts of the territories subject to the government of the East India Company into which the common law of England has been introduced:

And whereas doubts may exist whether the said right can be enforced by virtue of the principles of equity and good conscience in the other parts of the territories subject to the Government of the East India Company:

And whereas for the encouragement of learning it is desirable that the existence of the said right should be placed beyond doubt, and that the said right should be made capable of easy enforcement in every part of the said territories:

And whereas it is doubtful whether the Act of Parliament, 5 & 6 Victoria, chapter 45, entitled "*An Act to amend the Law of Copyright*," although such Act extend to every part of the British dominions, has made appropriate and sufficient provision for the enforcement in every part of the said territories subject

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* Act XX. of 1847 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh	See *Gazette of India*.	Dec. 4, 1880, Pt. I., p. 672.
Aden	Ditto	June 28, 1879, Pt. I., p. 434.
West Jalpaiguri	Ditto	Mar. 5, 1881, Pt. I., p. 74.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	Oct. 22, 1881, Pt. I., p. 504.
The Jhánsi Division	Ditto	Aug. 31, 1878, Pt. I., p. 546.
The scheduled portion of the Mirzápur District.	Ditto	May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	May 31, 1879, Pt. I., p. 382.
The Districts of Hazára, Pesháwar, Kohat, Bannu, Dera Ismail Khán, and Dera Gházi Khán	Ditto	Jan. 30, 1886, Pt. I., p. 48.
The District of Lahaul	Ditto	May 1, 1886, Pt. I., p. 301.
The Scheduled Districts of the Central Provinces	Ditto	Dec. 13, 1879, Pt. I., p. 771.
The District of Silhat	Ditto	Oct. 4, 1879, Pt. I., p. 631.

It has been extended, under the same Act, to the following Scheduled Districts:—

The Districts of Kumáon and Garhwál	See *Gazette of India*.	Nov. 4, 1876, Pt. I., p. 605.
The North-Western Provinces Tarái	Ditto	Sep. 23, 1876, Pt. I., p. 505.

to the government of the East India Company of the said right by proprietors thereof; and whether the said Act of Parliament has made provision for the enforcement of the said right by or against any persons not being subject to the jurisdiction of the Courts established by Her Majesty's charter:

Duration of copyright in book published in author's lifetime.

1. It is therefore hereby enacted that the copyright in every book published in the lifetime of its author within the said territories after the passing of the Act of Parliament 3 & 4 Wm. IV., c. 85, entitled "*An Act for effecting an arrangement with the East India Company and for the better government of His Majesty's Indian Territories till the 30th day of April 1854,*" shall endure for the natural life of such author, and for the further term of seven years commencing at the time of his death, and shall be the property of such author and his assigns: Provided always that if the said term of seven years shall expire before the end of forty-two years from the publication of such book, the copyright shall in that case endure for such period of forty-two years; and that the copyright in every book published after the death of its author and after the passing of the Act of Parliament last aforesaid shall endure for the term of forty-two years from the first publication thereof, and shall be the property of the proprietor of the author's manuscript, from which such book shall be first published, and his assigns.*

Proprietorship.

In book published after author's death.

Proprietorship.

Power to license republication when copyright proprietor refuses.

2. And whereas it is expedient to provide against the suppression of books of importance to the public: It is enacted, that it shall be lawful for the Governor-General in Council, on complaint made to them that the proprietor of the copyright in any book published after the passing of this Act within the said territories has, after the death of its author, refused to republish or to allow the republication of the same, and that, by reason of such refusal, such book may be withheld from the public, to grant a license to such complainant to publish such book in such manner and subject to such conditions as they may think fit, and it shall be lawful for such complainant to publish such book according to such license.†

Registry of copyright, assignments, and licenses.

3.‡ A book of registry, wherein may be registered, as hereinafter enacted the proprietorship in the copyright of books and assignments thereof, and licenses affecting such copyright, shall be kept in the office of the Secretary to the Government of India for the Home Department, and shall, at all convenient times, be opened to the inspection of any person on payment of eight annas for every entry which shall be searched for or inspected in the said book. Such officer shall, whenever thereunto reasonably required, give a copy of any entry in such book, certified under his hand, to any person requiring the same, on payment to him of the sum of two rupees, and such copies, so certified, shall be received in evidence in all Courts and in all summary proceedings, and shall be *primâ-facie* proof of the proprietorship or assignment of copyright or license as therein expressed, but subject to be rebutted by other evidence.§

Inspection.

Giving copies.

4. [*Punishment for making false entry in registry, &c.—Repealed by Act XVII. of 1862, s. 2.*]

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* From 5 & 6 Vic., c. 45, s. 3.

† See 5 & 6 Vic., c. 45, s. 5.

‡ Certain formal words in s. 3 and ss. 5 to 16 (both inclusive), which were repealed by Acts XVI. of 1874 and XII. of 1876, have been omitted.

§ See 5 & 6 Vic., c. 45, s. 11.

Act XX. of 1847.

Copyright proprietor's right to make entries in registry.

5. It shall be lawful for the proprietor of copyright in any book published after the passing of the said Act of Parliament, 3 & 4 Wm. IV., c. 85, to make entry in the registry book of the title of such book, the time of the first publication, and the name and place of abode of the publisher thereof, and the name and place of abode of the proprietor of the copyright of the said book, or of any portion of such copyright in the form in that behalf given in the schedule to this Act annexed, upon payment of the sum of two rupees to the said Secretary. It shall be lawful for every such registered proprietor to assign his interest, or any portion of his interest therein, by making entry in the said book of registry of such assignment, and of the name and place of abode of the assignee thereof in the form given in that behalf in the said schedule, on payment of the like sum; and such assignment, so entered, shall be effectual in law to all intents and purposes whatsoever* and shall be of the same force and effect as if such assignment had been made by deed.†

Fee.

Assignment of copyright by entry in registry.

Application by person aggrieved by entry in registry for order to vary or expunge it.

6. If any person shall deem himself aggrieved by any entry made under colour of this Act in the said book of registry, it shall be lawful for such person to apply by motion to the Supreme Court of Calcutta, or if the Court shall not be then sitting to any Judge of such Court sitting in chambers, for an order that such entry may be expunged or varied. Upon any such application to the said Court, or to a Judge as aforesaid, such Court or Judge shall make such order for expunging, varying, or confirming such entry, either with or without costs, as to such Court or Judge shall seem just, and the said Secretary shall, on the production to him of any such order for expunging or varying any such entry, expunge or vary the same according to the requisitions of such order.‡

Liability for infringement of copyright.

7. If any person shall print or cause to be printed, either for sale or exportation, any book in which there shall be subsisting copyright, without the consent in writing of the proprietor thereof, or shall have in his possession, for sale or hire, any such book so unlawfully printed, without such consent as aforesaid, such offender§ shall be liable§ to a suit in the highest local Court exercising original civil jurisdiction.‖

Notice to be given by defendant to plaintiff in suit for infringing copyright.

8. In any suit or action brought in any of the Courts of Judicature established by Her Majesty's charter under the provisions of this Act against any person for printing any such book for sale, hire, or exportation, or for selling, publishing, or exposing to sale or hire, or causing to be sold, published, or exposed to sale or hire, or for having in his possession for sale or hire, any such book so unlawfully printed, the defendant on pleading thereto shall give to the plaintiff a notice in writing of any objections on which he means to rely on the trial of such action, and if the nature of his defence be that the plaintiff in such action was not the author or first publisher of the book in which he shall by such action claim copyright, or is not the proprietor of the

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* Certain words, repealed by Act I. of 1879, have been omitted. That Act exempts assignments of copyright under this section from stamp-duty.—See Sch. II., No. 5.

† 5 & 6 Vic., c. 45, s. 13.

‡ 5 & 6 Vic., c. 45, s. 14.

§ Certain words, repealed by Act XII. of 1876, have been omitted.

‖ See 5 & 6 Vic., c. 45, s. 15.

copyright therein, or that some other person than the plaintiff was the author or first publisher of such book, or is the proprietor of the copyright therein, then the defendant shall specify in such notice the name of the person who he alleges to have been the author or first publisher of such book, or the proprietor of the copyright therein, together with the title of such book, and the time when and the place where such book was first published, otherwise the defendant in such action shall not at the trial or hearing of such action be allowed to give any evidence that the plaintiff in such action was not the author or first publisher of the book in which he claims such copyright as aforesaid, or that he was not the proprietor of the copyright therein, and at such trial or hearing no other objection shall be allowed to be made on behalf of such defendant than the objections stated in such notice, or that any other person was the author or first publisher of such book, or the proprietor of the copyright therein, than the person specified in such notice, or give in evidence in support of his defence any other book than one substantially corresponding in title, time, and place of publication with the title, time, and place specified in such notice.*

Particulars to be stated in notice when right of plaintiff is denied.

Effect of omission.

9. In any such suit or action as last aforesaid, brought in any zila Court or other local Court as aforesaid, the defendant shall state in his answer all such matters as he means to rely on, and which by the last preceding section the defendant in any suit or action brought in any of the Courts of Judicature established by Her Majesty's charter is required to give notice of in writing, otherwise such defendant shall be subject to the same consequences for any omission in his answer as a defendant is made subject to by the last preceding section for any omission in his notice.

Particulars to be stated in defendant's answer to suit.

Effect of omission.

10. When any publisher or other person shall, within the said territories, before or at the time of the passing of this Act, but after the passing of the said Act of Parliament, 3 & 4 Wm. IV., c. 85, have projected, conducted, and carried on, or shall hereafter project, conduct, or carry on, or be the proprietor of any encyclopædia, review, magazine, periodical work, or work published in a series of books or parts, or any book whatsoever, and shall have employed or shall employ any persons to compose the same, or any volumes, parts, essays, articles, or portions thereof for publication in, or as part of the same, and such work, volumes, parts, essays, articles, or portions shall have been, or shall hereafter be, composed under such employment on the terms that copyright therein shall belong to such proprietor, projector, publisher, or conductor, and paid for by such proprietor, projector, publisher, or conductor, the copyright in every such encyclopædia, review, magazine, periodical work, and work published in a series of books or parts, and in every volume, part, essay, article, and portion so composed and paid for, shall be the property of such proprietor, projector, publisher, or conductor, who shall enjoy the same rights as if he were the actual author thereof, and shall have such term of copyright therein as is given to the authors of books by this Act, except only that in the case of essays, articles, or portions forming part of and first published in reviews, magazines, or other periodical works of a like nature after the term of twenty-eight years from the first publication thereof respectively, the right of publishing the same in a separate form shall revert to the author for the remainder of the term given by this Act.

Copyright in encyclopædia, review, &c.

* See 5 & 6 Vic., c. 45, s. 16.

Act XX. of 1847.

Consent of author to publication singly.

Provided always that during the term of twenty-eight years the said proprietor, projector, publisher, or conductor, shall not publish any such essay, article, or portion separately or singly without the consent, previously obtained, of the author thereof or his assigns.

Employé's right to publish separately.

Provided also that nothing herein contained shall alter or affect the right of any person who shall have been or shall be so employed as aforesaid to publish any such his composition in a separate form, who by any contract, express or implied, may have reserved or may hereafter reserve to himself such right, but every author reserving, retaining, or having such right, shall be entitled to the copyright in such composition when published in a separate form according to this Act without prejudice to the right of such proprietor, projector, publisher, or conductor as aforesaid.

Rights of proprietor of copyright on making entry in registry.

11. The proprietor of the copyright in any encyclopædia, review, magazine, periodical work, or other work published in a series of books or parts,* shall be entitled to all the benefits of the registration in the office of the Secretary to the Government of India for the Home Department, under this Act, on entering in the said book of registry the title of such encyclopædia, review, periodical work, or other work published in a series of books or parts, the time of the first publication of the first volume, number, or part thereof, or of the first volume, number, or part first published after the passing of this Act in any such work which shall have been published heretofore, and after the passing of the said Act of Parliament, 3 & 4 Wm. IV., c. 85, and the name and place of abode of the proprietor thereof and of the publisher thereof when such publisher shall not also be the proprietor thereof.

Proprietorship of copies of book illegally printed.

12. All copies of any book wherein there shall be copyright, and of which entry shall have been made in the said registry book, and which shall have been unlawfully printed without the consent of the registered proprietor of such copyright in writing under his hand first obtained, shall be deemed to be the property of the proprietor of such copyright, and who shall be registered as such, and such registered proprietor shall, after demand thereof in writing, be entitled to sue for and recover the same or damages for the detention thereof.

Right of copyright proprietor to sue for and recover copies or damages.

13. If the case be within the jurisdiction of any of the Courts of Judicature established by Her Majesty's charter, such registered proprietor shall be entitled to sue for and recover such copies or damages for the detention thereof in an action of detinue from any party who shall detain the same, or to sue for and recover damages for the conversion thereof in an action of trover, and if the case be within the jurisdiction of any zila Court or other local Court as aforesaid, the registered proprietor shall be entitled to sue for and recover such copies or damages for the detention or conversion thereof, in such form as is in use in the said zila or other local Courts for the recovery of specific personal property or damages for the detention or conversion thereof.

Entry in registry to be made before copyright proprietor can proceed under Act.

14. No proprietor of copyright in any book first published after the passing of the said Act of Parliament, 3 & 4 Wm. IV., c. 85, shall maintain, under the provisions of this Act, any action or suit at law or in equity, or

* *Roussac* v. *Thacker*, 1 Hyde 9, 12, 13.

any summary proceeding in respect of any infringement of such copyright, unless he shall, before commencing such action, suit, or proceeding, have caused an entry to be made in the book of registry at the office of the said Secretary of such book pursuant to this Act. Act XX. of 1847.

Omission to make entry not to affect copyright, &c.

Provided always that the omission to make such entry shall not affect the copyright in any book, nor the right to sue or proceed in respect of the infringement thereof, except the right to sue or proceed in respect of the infringement thereof, under the provisions of this Act.

Plea by defendant and special evidence in actions for things done under Act.

Defendant to have full costs if successful.

15. If any action or suit shall be commenced or brought in any of the Courts of Judicature established by Her Majesty's charter against any person or persons whomsoever for doing or causing to be done anything in pursuance of this Act, the defendant or defendants in such action may plead the general issue and give the special matter in evidence; and if upon such action a verdict shall be given for the defendant, or the plaintiff shall become nonsuited or discontinue his action, then the defendant shall have and recover his full costs, for which he shall have the same remedy as a defendant in any case by law hath in the said last-mentioned Courts.

Limitation of criminal proceedings for breach of Act.

16. All * indictments, informations, and other criminal proceedings for any offence which shall be committed against this Act, shall be brought, sued, and commenced within twelve calendar months next after such offence committed, or else the same shall be void and of none effect.

SCHEDULE.

No. 1.

Original Entry of Proprietorship of Copyright of a Book.

Time of making the Entry.	Title of book.	Name of the Publisher and Place of Publication.	Name and Place of Abode of the Proprietor of the Copyright.	Date of first Publication.

* Certain words, repealed by Act IX. of 1871, have been omitted.

Act XV. of 1848.

No. 2.

Form of Entry of Assignment of Copyright in any Book previously registered.

Date of Entry.	Title of Book.	Assignor of the Copyright.	Assignee of the Copyright.
	[Set out the title of the book, and refer to the page of the registry book in which the original entry of the copyright thereof is made.]		

ACT XV. OF 1848.

PASSED ON THE 17TH JUNE 1848.

An Act to forbid trading by the Officers of the Supreme Courts.

FOR the better discharge of their duties by the officers of the undermentioned Courts of Justice;* It is enacted as follows :—

Preamble.

1. No officer of any of the Courts of Judicature established by Royal Charter within the territories subject to the government of the East India Company, or of any Court established for the relief of insolvent debtors within the said territories, shall, directly or indirectly, by himself, or by any other person or persons on his behalf, accept from any person or persons any gift or reward for any act or behaviour in his office other than his legal salary and fees and profits of office, or hold any office in any bank or public company, except as hereinafter excepted, or carry on or be concerned in any dealings as a banker or trader, or as agent, factor, or broker, either for his own advantage, or for the advantage of any other person or persons, except such dealings as it may be part of the duty of any such officer by virtue of his office to carry on.

Prohibition, in case of officers of Supreme Courts, against accepting gifts; holding certain offices; carrying on dealings.

2. This Act shall not be construed to forbid any officer of any of the said Courts, who is also a practising advocate, attorney, solicitor, or proctor in any of the said Courts,

Exemption of officers who are also advocates, &c.

* See 24 & 25 Vic., c. 104, s. 11.

from taking the usual fees and emoluments of advocates, attorneys, solicitors, or proctors, nor to apply to any advocate, attorney, solicitor, proctor, sheriff, assignee, receiver, or committee, so far as he is held to be in that capacity merely for some purposes an officer of any of the said Courts.

Holding unpaid office in society.

3. This Act shall not be construed to forbid any officer of any of the said Courts from holding any unpaid office in any society for charitable purposes, or for the advancement of knowledge, or for the encouragement of science, art, or manufactures.

Punishment for contravention of Act.

4. Every officer of any of the said Courts who shall knowingly offend against this Act shall, on conviction thereof, be liable to be punished by deprivation of his office, and also, by the sentence of the Court before which he shall be convicted, may be declared incapable, and in that case shall become incapable, of being appointed to the same or any other office of the same Court, or to serve Her Majesty* in the territories under the Government,* or in such part of the said territories as shall be specified in the sentence, or in the discretion of the Court may be otherwise punished by fine or fine and imprisonment for his misdemeanour as to the Court shall seem fit, regard being had to the nature of his offence.

ACT XX. OF 1848.†

PASSED ON THE 23RD SEPTEMBER 1848.

An Act for better enforcing the attendance of proprietors and farmers of land before Collectors of Land-revenue in the Lower Provinces of the Bengal Presidency.

Preamble.

WHEREAS, by sundry Regulations of the Bengal Code, provision is made for the imposition of a daily fine by the Board of Revenue or other Authority exercising the powers of that Board on any proprietor or farmer of land subject to the provisions contained in the said several Regulations, who, when duly summoned by the Collector or other officer exercising the powers of Collector, shall omit or refuse to attend, or to cause his officer or agent to attend, or to furnish the accounts or documents required, and shall not show sufficient cause for such omission; and it is further provided that the fine, when confirmed by Government, is to be levied by the same process as is prescribed for the recovery of arrears of revenue; and whereas in many cases, by the delay thus occasioned, the whole burden of the penalty is greatly increased beyond what would be necessary if summary power were given to the officer by whom the requisition is made to impose and levy reasonable fines, subject to review by the Commissioner of Revenue and other superior Authority; It is enacted as follows:—

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* Certain words, repealed by Act XII. of 1876, have here been omitted.

† Act XX. of 1848 has been declared to apply to the whole of Bengal, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 6. It has also been declared in force by Reg. III. of 1872, s. 3, as amended by Reg. III. of 1886, s. 2, in the Santal Parganas, and under s. 3 of the Scheduled Districts Act (XIV. of 1874) in West Jalpaiguri, the Districts of Hazáribágh, Lohárdaga, and Mánbhum, Pargana Dhálbhum, and the Kolhan.

The Act has been repealed in the territories to which the Assam Land and Revenue Regulation extends.—See Reg. I. of 1886, s. 2.

Act X. of 1849.

Penalty on landholders not attending when summoned by Collector.

1. If any proprietor or farmer of land shall omit or refuse to attend, or to cause his officer or agent to attend, when duly summoned by the Collector, in any case specified in any of the said Regulations, by the time prescribed in the notice issued by the Collector, or shall omit or refuse to furnish the accounts or documents required, and shall not show sufficient cause for such omission, the Collector may impose, of his own authority, such daily fine, to be payable daily until compliance with the requisition, as he may think adequate to the situation and circumstances in life of the defaulter, not exceeding in any case the daily fine of fifty rupees: and the amount of such fine, accruing due from time to time, may be levied without further confirmation by the same process as is prescribed for the recovery of arrears of revenue.

Levy of fine.

Report of imposition and levy of fine.

2. The Collector shall forthwith report the imposition of every such fine, and the amount thereof, and also from time to time the amount levied, to the Commissioner of Revenue, who shall report the same for the information of the Local Government.

Appeal from Collector's orders.

3. Every order passed by a Collector under this Act shall be appealable in the usual manner to the Commissioner of Revenue and other superior Authority, but no such appeal shall avail to prevent the levy of any fine so imposed pending the appeal.

Special report of levy exceeding 500 rupees.

4. Whenever the amount levied under any such order, issued for any default by authority of a Collector under this Act, shall have exceeded five hundred rupees, the Collector shall report the case specially to the Commissioner of Revenue; and no further levy for such default shall be made otherwise than by authority of the Commissioner of Revenue.

Saving of power to fine.

5. Nothing in this Act contained shall be deemed to repeal the power of imposing daily fines and of levying the fines so imposed in the manner prescribed by the said several Regulations.

"Collector" defined.

6. The word "Collector" used in this Act shall be taken to mean any person lawfully exercising the powers of a Collector.

Extent of Act.

7. This Act shall not extend to the North-West Provinces of the Presidency of Bengal.

ACT X. OF 1849.*

PASSED ON THE 26TH MAY 1849.

An Act for appointing a Commissioner of Revenue at Madras.

Preamble.

WHEREAS it is expedient that the Governor of Fort St. George in Council should be empowered to depute a Member of the Board of Revenue to perform in any of the districts of that Presidency all or any of the duties which, by the general regulations and laws of the Presidency, belong to the Board of Revenue collectively; It is enacted as follows:—

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* Act X. of 1849 has been declared to be in force in the whole of the Madras Presidency, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 4.

1. The Governor of Fort St. George in Council may, from time to time, whenever he shall see fit, depute a Member of the Board of Revenue to perform alone, in any of the districts of that Presidency, all or any of the duties which, by the general regulations and laws of the Presidency, belong to the Board of Revenue collectively.

Power to depute Member to perform duties of Board.

2. When a special commission shall be given to a Member of the Board of Revenue under this Act, the Member of the Board named therein shall, by virtue thereof, be empowered to exercise, within the limits of his commission, all the powers and duties which by law are vested in the Board of Revenue collectively, without exception, or subject to any exceptions or restrictions which shall be prescribed in such commission; and all Regulations and Acts concerning the Board of Revenue shall be deemed to apply to the said Commissioner within the limits of his commission, and with regard to all things concerning the revenues of the district included in it, so far as is necessary to give full effect to his commission and to this Act.

Powers of Member so deputed.

Enactments applied to Commissioner.

3. Every such commission shall be published in the *Fort St. George Gazette*, and the Commissioner shall enter on his office from the date of such publication; and in like manner the revocation or other determination of any such commission shall be published in the *Fort St. George Gazette*.

Publication of commission, and revocation thereof.

4. The correspondence and other documents belonging to any such commission shall be deposited, on the determination thereof, in the office of the Board of Revenue, and shall be deemed records of the said Board.

Deposit of records.

ACT V. OF 1850.*

PASSED ON THE 8TH MARCH 1850.

An Act for freedom of the Coasting Trade of India.

WHEREAS by an Act of Parliament passed in the thirteenth year of the reign of Her Majesty, intituled "An Act to amend the laws in force for the encouragement of British Shipping and Navigation," it is enacted, with regard to the Coasting Trade of India, that it shall be lawful for the Governor-General of India in Council to make any regulations authorizing or permitting the conveyance of goods or passengers from one part of the possessions of the East India Company to another part thereof, in other than British ships, subject to such restrictions or regulations as he may think necessary; It is enacted as follows:—

Preamble.

1. Goods and passengers may be conveyed from one part of the territories under the government of the East India Company to another part thereof, in other than British ships, without any restriction, other than is or shall be equally imposed on British ships, for securing payment of duties of customs or otherwise.

Freedom of ships other than British in coasting trade.

* Act V. of 1850 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh	See *Gazette of India*.	Dec. 4, 1880, Pt. I., p. 672.
The District of Silhat . . .	Ditto	Oct. 4, 1879, Pt. I., p. 631.

Act XI. of 1850.

ACT XI. OF 1850.*

PASSED ON THE 15TH MARCH 1850.

An Act to amend Act X., 1841.

Preamble.

FOR amendment of Act X., 1841, It is enacted as follows :—

1. [*Repealed by Act XIV. of 1870.*]

Passes under Act X., 1841, to ships of allied Native States wherever built.

2. The passes which, under section 24 of the said Act, may be issued for conferring the privileges and advantages of a British ship, in certain cases, to any ship or vessel built within the dominions of a Native Prince or State in subordinate alliance with, or having subsidiary treaties with the East India Company, may, after the passing of this Act, be issued in the like cases, and under the same restrictions, to any ship or vessel belonging to any such Native Prince or State, or their subjects, wherever the same may have been built.

Registry of, and passes to, certain coasting vessels.

3. All ships or vessels of whatever rig and of whatever tonnage, owned by British subjects, entitled to registry under Act X., 1841, or owned by such Native Princes or States, or by their subjects entitled to passes under Act X., 1841, as amended by this Act, employed only in coasting voyages, or between any port of the continent of India and the island of Ceylon, may be registered and obtain passes, and the tonnage may be marked, according to such rules as shall be made from time to time by the Governor or Governor in Council of each Presidency.

Fees for certificates of registry of such vessels.

4. The owners of coasting vessels, registered under section 3 of this Act, shall pay for each certificate of registry,

For a vessel not exceeding the burthen of four tons, one rupee,

Exceeding four tons, and not exceeding twenty tons, five rupees,

Exceeding twenty tons, and not exceeding eighty tons, seven rupees,

Exceeding eighty tons, for each ton two annas,

Which fees shall be carried to the credit of the Government of the Presidency in which they are levied.

Construction.

5. This Act shall be construed with and as part of Act X., 1841.

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* Act XI. of 1850 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

Sindh	See *Gazette of India*.	Dec. 4, 1880, Pt. I., p. 672.
Aden	Ditto	. June 28, 1879, Pt. I., p. 434.
The District of Silhat. . . .	Ditto	. Oct. 4, 1879, Pt. I., p. 631.

ACT XII. OF 1850.*

Act XII. of 1850.

PASSED ON THE 22ND MARCH 1850.

For avoiding loss by the default of Public Accountants.

Preamble. FOR better avoidance of loss through the default of public accountants, It is enacted as follows :—

Public accountants to give security.

1. Every public accountant shall give security for the due discharge of the trusts of his office, and for the due account of all moneys which shall come into his possession or control, by reason of his office.

Amount and kind of security, and with what sureties.

2. In default of any Act having special reference to the office of any public accountant, the security given shall be of such amount and kind, real and personal, or both, and with such sureties (regard being had to the nature of the office), as shall be required by any rules made or to be made from time to time, by the authority by which

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* Act XII. of 1850 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

The Districts of Thár and Párkar and the Upper Sindh Frontier	See *Gazette of India.*	Dec. 4, 1880, Pt. I., p. 672.
West Jalpaiguri, the Western Hills of Dárjiling, the Dárjiling Tarái, and the Damson Sub-division of the Dárjiling District	Ditto	Mar. 5, 1881, Pt. I., p. 74.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	Oct. 22, Pt. I., p. 504.
The Jhánsi Division . . .	Ditto	Aug. 31, 1878, Pt. I., p. 546.
Kumáon and Garhwál . . .	Ditto	Nov. 4, 1876, Pt. I., p. 605.
The scheduled portion of the Mirzápur District	Ditto	May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	May 31, 1879, Pt. I., p. 382.
The Scheduled Districts of the Central Provinces	Ditto	Dec. 13, 1879, Pt. I., p. 771.
The Districts of Kámrup, Naugong, Darrang, Sibságar, Lakhimpur, Goálpára (excluding the Eastern Dvárs), and Káchár (excluding the North Káchár Hills)	Ditto	Aug. 26, 1878, Pt. I., p. 533.
The District of Silhat . . .	Ditto	Oct. 4, 1879, Pt. I., p. 631.

It has been extended, under the same Act, to the following Scheduled Districts :—

The North-Western Provinces Tarái	See *Gazette of India.*	Sep. 22, 1876, Pt. I., p. 505.
The Scheduled Districts of the Panjáb	Ditto	Dec. 29, 1883, Pt. I., p. 505.
Ajmere and Merwára . . .	Ditto	June 22, 1878, Pt. I., p. 380.

As to the partial repeal of the Act in the Bombay Presidency, see Bombay Act V. of 1879, s. 2 and Sch. A. As to its repeal in Assam, see Reg. I. of 1886.

Act XII. of 1850.

each public accountant is appointed to his office, subject to the approval of the Governor or Governor in Council of the Presidency or place.

"Public accountant" defined.

3. Every person is a public accountant within the meaning of this Act, who, by reason of any office held by him in the service of the East India Company, is entrusted with the receipt, custody, or control of any moneys or securities for money, or the management of any lands belonging to the East India Company, or as Official Assignee or Trustee, or as sarbaráhkár or in any other official capacity, with the receipt, custody, or control of any moneys or securities for money, or the management of any lands belonging to any other person or persons.*

Prosecution of accountants and sureties.

4. The person or persons at the head of the office to which any public accountant belongs may proceed against any such public accountant and his sureties for any loss or defalcation in his accounts as if the amount thereof were an arrear of land-revenue due to Government.

Enactments applied to proceedings by and against accountants.

5. All Regulations and Acts now or hereafter to be in force for the recovery of arrears of land-revenue due to Government, and for recovery of damages by any person wrongfully proceeded against for any such arrear, shall apply, with such changes in the forms of procedure as are necessary to make them applicable to the case, to the proceedings against and by such public accountant.

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* See Bengal Act IV. of 1870, s. 42.

ACT XVIII. OF 1850.*

Act XVIII. of 1850.

PASSED ON THE 4TH APRIL 1850.

An Act for the protection of Judicial Officers.

Preamble.

FOR the greater protection of Magistrates and others acting judicially, It is enacted as follows:—

Non-liability to suit of officers acting judicially, for official acts done in good faith, and of officers executing warrants and orders.

1. No Judge, Magistrate, Justice of the Peace, Collector, or other person acting judicially, shall be liable to be sued in any Civil Court, for any act done or ordered to be done by him in the discharge of his judicial duty,† whether or not within the limits of his jurisdiction: provided that he at the time, in good faith,‡ believed

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* Act XVIII. of 1850 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

The Taluqs of Bhadrachalam, Rakapilli, and the Rampa Country	See *Gazette of India.*	Oct. 5, 1879, Pt. I., p. 630.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	. Oct. 22, 1881, Pt. I., p. 504.
Sindh	Ditto	. Aug. 10, 1878, Pt. I., p. 482.
West Jalpaiguri, the Western Hills of Dárjiling, the Dárjiling Tarái, and the Damson Sub-division of the Dárjiling District	Ditto	. Mar. 5, 1881, Pt. I., p. 74.
The Jhánsi Division . . .	Ditto	. Aug. 31, 1881, Pt. I., p. 546.
Kumáon and Garhwál . . .	Ditto	. Nov. 4, 1876, Pt. I., p. 605.
The scheduled portion of the Mirzápur District	Ditto	. May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	. May 31, 1879, Pt. I., p. 382.
The Districts of Hazára, Peshá-war, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán	Ditto	. Jan. 30, 1886, Pt. I., p. 48.
The District of Lahaul . . .	Ditto	. May 1, 1886, Pt. I., p. 301.
The Scheduled Districts of the Central Provinces . . .	Ditto	. Dec. 13, 1879, Pt. I., p. 771.
Coorg	Ditto	. Dec. 28, 1879, Pt. I., p. 747.
The District of Silhat . . .	Ditto	. Oct. 4, 1879, Pt. I., p. 631.
The Districts of Kámrup, Naugong, Darrang, Sibságar, Lakhimpur, Goálpára (excluding the Eastern Dvárs), and Káchár (excluding the North Káchár Hills)	Ditto	. Aug. 24, 1878, Pt. I., p. 533.

It has been extended, under the same Act, to the following Scheduled Districts :—

The North-Western Provinces Tarái	See *Gazette of India.*	Sep. 23, 1876, Pt. I., p. 505.
Ajmere and Merwára . . .	Ditto	. June 22, 1879, Pt. I., p. 380.

† 3 Bom. A. C. J. 47.

‡ See 1 Tayl. & Bell 228n.: 6 Mad. 439: 3 Bom. A. C. J. 46: 4 Ben. A. C. J. 37.

Act XIX. of 1850.

himself to have jurisdiction to do or order the act complained of: and no officer of any Court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector, or other person acting judicially, shall be liable to be sued in any Civil Court, for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same.

ACT XIX. OF 1850.*

PASSED ON THE 11TH APRIL 1850.

Concerning the binding of Apprentices.

Preamble.

FOR better enabling children, and especially orphans and poor children brought up by public charity, to learn trades, crafts, and employments, by which, when they come to full age, they may gain a livelihood, It is enacted as follows:—

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* Act XIX. of 1850 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh	See *Gazette of India*.	Dec. 4, 1880, Pt. I., p. 672.
West Jalpaiguri, the Western Dvárs, the Western Hills of Dárjiling, the Dárjiling Tarái, and the Damson Sub-division of the Dárjiling District.	Ditto	Mar. 5, 1881, Pt. I., p. 74.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	Oct. 22, 1881, Pt. I., p. 504.
The Jhánsí Division	Ditto	Aug. 31, 1878, Pt. I., p. 546.
The scheduled portion of the Mirzápur District	Ditto	May 31, 1879, Pt. I., p. 383
Jaunsar Báwar	Ditto	May 31, 1879, Pt. I., p. 382.
The Districts of Hazára, Peshávar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán	Ditto	Jan. 30, 1886, Pt. I., p. 48.
The Scheduled Districts of the Central Provinces	Ditto	Dec. 13, 1879, Pt. I., p. 771.
The District of Silhat . . .	Ditto	Oct. 4, 1879, Pt. I., p. 631.

It has been extended, under the same Act, to the following Scheduled Districts:—

Kumáon and Garhwál . . .	See *Gazette of India*.	Nov. 4, 1876, Pt. I., p. 606.
The North-Western Provinces Taráí	Ditto	Sep. 23, 1876, Pt. I., p. 505.

It has been declared, under the same Act, not to be in force in the Scheduled District of Lahaul.—See *Gazette of India*, May 1, 1886, Pt. I., p. 301.

Instruments of apprenticeship executed by a Magistrate under this Act, or by which a person is apprenticed by or at the charge of a public charity, are exempted from stamp-duty.—See Act I. of 1879, Sch. II., No. 12, cl. (*c*).

1. Any child, above the age of ten, and under the age of eighteen years, may be bound apprentice by his or her father or guardian to learn any fit trade, craft, or employment, for such term as is set forth in the contract of apprenticeship, not exceeding seven years, so that it be not prolonged beyond the time when such child shall be of the full age of twenty-one years, or, in the case of a female, beyond the time of her marriage.

Apprenticing of child between 10 and 18 years old.

2. The age set forth in the contracts shall be evidence of the age of the child, in all questions which arise as to the right of the master to the continuance of the service.

Evidence of age in questions as to right to service.

3. Any Magistrate or Justice of the Peace may act with all the powers of a guardian under this Act, on behalf of any orphan, or poor child abandoned by its parents, or of any child convicted before him or any other Magistrate of vagrancy, or the commission of any petty offence.

Powers of Magistrate or Justice acting for orphans, &c.

4. Any orphan or poor child, brought up by any public charity, may be bound apprentice by the governors, directors, or managers thereof, as his or her guardians for this purpose.

Apprenticing of child brought up by public charity.

5. Any such boy may be bound as an apprentice in the sea-service to any of Her Majesty's subjects, being the owner of any registered ship belonging to and trading from any port in the territories under the Government of India, which has been declared to be a registering port under Act X., 1841, to be employed in any such ship, the property of such person, commanded by a British subject, and, while so employed, to be taught the craft and duty of a seaman.*

Apprenticing of such boy in sea-service.

6. [*Repealed by Act XIV. of 1870.*]

7. The master or commander of any ship in which an apprentice bound to the sea-service shall be appointed to serve by the party to whom he is bound, shall be deemed the agent of such party for the purpose of this Act.

Who to be agent of master of apprentice serving in ship.

8. Every contract of apprenticeship shall be in writing, according to the form given in the Schedule A annexed to this Act, or to the like effect, which shall set forth the conditions agreed upon, particularly specifying the age of the apprentice, the term for which he is bound, and what he is to be taught.

Form and contents of contract of apprenticeship.

9. Every such contract shall be signed by the person to whom the apprentice is bound, and by the person by whom he is bound, and by the apprentice, when he is of the age of fourteen years or more at the time of binding; but, when the apprentice is bound by the governors, directors, or managers of a public charity, the signature of two of them, or of their secretary or officer, shall be sufficient on behalf of the persons binding the apprentice.

Signatures to contract.

10. No such contract shall be valid unless it be executed in the manner aforesaid, nor until it has been deposited in the office of the Chief Magistrate of the place or district where it has been executed, or, if the apprentice is bound to the sea-service, in the office of the person appointed, under Act X., 1841, to make registry of ships at the port where he is to begin his service;

Contract not valid unless executed as prescribed, and deposited.

* See Act I. of 1859, s. 4.

Act XIX. of 1850.

and the person in whose office any such contract is deposited shall give to each of the parties a copy thereof, certified under his hand, which certified copies shall be received as evidence of the contract, without formal proof of the handwriting of the Magistrate or registering officer.

Copies to be given to parties.

11. The terms of service may be changed at any time during the apprenticeship, or the contract may be determined, with the consent of both parties to the contract or their personal representatives, and with the consent of the apprentice, if he is above the age of fourteen years; provided that the changes agreed to or the termination of the contract shall be expressed in writing on the original contract, with the signature of the proper parties according to section 9* of this Act; and the Magistrate or registering officer shall thereupon make under his hand corresponding endorsements on the office-copies, which shall be brought to him at the same time for that purpose.

Alteration of terms of service and termination of contract.

12. The master of any apprentice bound under this Act may, with the consent of the person by whom he was bound, and with the consent of the apprentice if he is above the age of fourteen years, assign such apprentice to any other person, who is willing to take him for the residue of his apprenticeship, and subject to the conditions thereof; provided that such person shall, by endorsement under his own hand on the contract, declare his acceptance of such apprentice, and acknowledge himself bound by the agreements and covenants therein mentioned to be performed on the part of the master, and that the consent of the other parties aforesaid shall be expressed in writing on the same, and signed by them respectively: and every such assignment shall be certified on the office-copies of the contract under the hand of the Magistrate or registering officer according to the form given in Schedule B annexed to this Act.

Assignment of apprentice to new master.

13. Upon complaint made to any Magistrate in the said territories,† by or on behalf of any apprentice bound under this Act, of refusal or neglect to provide for him, or to teach him according to the contract of apprenticeship, or of cruelty, or other ill-treatment by his master, or by the agent under whom he shall have been placed by his master, the Magistrate may summon the master or his agent, as the case may be, if he shall be within his jurisdiction, to appear before him at a reasonable time, to be stated in the summons, to answer the complaint; and at such time, whether the master or his agent be present or not (service of the summons being proved), may examine into the matter of the complaint; and, upon proof thereof, may cancel the contract of apprenticeship, and assess upon the offender, whether he shall be the master or his agent, a reasonable sum for behoof of the apprentice, not exceeding four times the amount of the premium paid upon the binding, or if no premium, or a less premium than fifty rupees was paid, not exceeding two hundred rupees; and if the offender shall not pay the sum so assessed, may levy the same by distress and sale of his goods and chattels, and if the offender shall not be the master, but his agent, by distress and sale of the goods and chattels of the master also.

Powers of Magistrate in case of complaint by apprentice against master.

14. No contract of apprenticeship shall be cancelled, nor shall any master or his agent be liable to any criminal proceeding, on account of such moderate chastisement for misbehaviour, given to any apprentice by his master

Power of master or his agent to chastise apprentice.

* The figure 9 has been substituted for the figure 8 by Act XII. of 1891, Sch. II.
† See s. 5.

or the agent of his master, as may lawfully be given by a father to his child; and the provision for enabling the contract of apprenticeship to be cancelled shall not bar any criminal proceeding against any master or his agent for an assault or other offence committed against his apprentice, for which he would be liable to be punished, had it been against his child, whether or not any proceedings be taken for cancelling the contract of apprenticeship.

Liability of master or agent for assault, &c.

15. Upon complaint made to any Magistrate, by or on behalf of the master of any apprentice bound to him under this Act, of any ill-behaviour of such apprentice, or if such apprentice shall have absconded, the Magistrate may issue his warrant for apprehending such apprentice, and may hear and determine the complaint, and punish the offender by an order for keeping the offender, if a boy, in confinement in any debtor's prison or other suitable place, not being a criminal gaol, for any time not exceeding one month, of which one week may be in solitary confinement, during which time such allowance shall be made for his subsistence by the master or his agent as the Magistrate shall order; and, if the offender be a boy of not more than fourteen years of age, may order him to be privately whipped: or, if the offender be a girl, or in the case of any boy the Magistrate deem any such punishment unfit, he may pass an order empowering the master of the apprentice or his agent to keep the offender in close confinement in his own house, or on board the vessel to which he belongs, upon bread and water, or such other plain food as may be given without injury to the health of the apprentice, for a period not exceeding one month.

Power of Magistrate in case of complaint by master against apprentice.

16. Upon complaint of wilful and repeated ill-behaviour on the part of the apprentice, and on the demand of the master, the Magistrate may order the contract of apprenticeship to be cancelled, whether or not the charge is proved; but only with the consent of the apprentice and of his father or guardian, if the charge is not proved: and such cancelling shall be with or without refund of the whole or part of any premium that may have been paid to the master on binding such apprentice, as to the Magistrate seems fit on consideration of the case; and all sums so refunded shall be applied under the direction of the Magistrate for behoof of the apprentice.

Cancelment of contract for misconduct of apprentice.

17. The Magistrate may order any sum recovered for behoof of the apprentice on cancelling the contract to be either laid out in binding him to another master, or otherwise for his benefit, or to be paid to the person by whom any premium was paid when he was bound apprentice.

Appropriation of sum recovered for apprentice on cancelment of contract.

18. No Magistrate shall entertain a complaint on the part of a master against an apprentice under this Act, unless it be brought within one month after the cause of complaint arose; or, if the cause of complaint arose on board-ship during a voyage, within one month after the arrival thereof at a port or place in the said territories; and no Magistrate shall entertain a complaint on the part of an apprentice against his master or the agent of his master under this Act, unless it be brought within three months after the cause of complaint arose; or, if the cause of complaint arose on board-ship during a voyage, within three months after the arrival thereof at a port or place in the said territories.

Limitation of complaint of master against apprentice;

of apprentice against master.

Act XIX. of 1850.

Effect of death of master during apprenticeship.

19. If the master of any apprentice shall die before the end of the apprenticeship, the contract of apprenticeship shall be thereby determined; and a proportionate part, corresponding to the unexpired portion of the term, of any premium, which shall have been paid to such master on the binding of the apprentice to him, shall be returned by the executors or administrators out of the estate of the deceased to the person or persons who shall have paid the same; unless the executors or administrators of the deceased master shall continue the business in which such apprentice shall have been employed, and shall, within three months from the death of the late master, make offer in writing to keep the apprentice on the terms of the original contract; in which case the estate of the deceased shall be discharged from all liabilities on account of such premium.

Offer by representative of master to continue apprenticeship.

Offer to be certified on original contract and copies.

20. If such offer to keep the apprentice shall be made as aforesaid, the same shall be fully expressed and certified by the executors or* administrators on the original contract of apprenticeship; and also on the office-copies thereof, by the Magistrate or registering officer; and the apprentice shall be bound to the executors or administrators so keeping him for the remaining term of his apprenticeship.

Maintenance of apprentice whose master dies.

Apprentice to continue to serve.

21. Any apprentice bound under this Act, whose master shall die during the apprenticeship, shall be entitled to maintenance for three months from and after the death of his master, out of the assets left by him; provided that during such three months such apprentice shall continue to live with, and serve as an apprentice, the executors or administrators of such master, or such person as they shall appoint.

Effect of insolvency of master during apprenticeship.

22. The apprentice of any person against whom a commission of bankruptcy shall be issued, or who shall be adjudged to have committed an act of insolvency, during the apprenticeship, shall be discharged from all obligation under the contract of apprenticeship; and, if any premium was paid on binding him as an apprentice, he or the person by whom he was bound shall be entitled to claim the amount thereof, as a debt against the estate of the bankrupt or insolvent.†

Persons amenable to jurisdiction of Magistrates' Courts.

23. For the purposes of this Act, all British subjects, wherever or of whatever parents born, as well as other persons in the territories under the Government of India, without the towns of Calcutta and Madras and the town and island of Bombay, shall be amenable to the jurisdiction of the Courts and Magistrates of India.

Appeal from orders of Mofussil Magistrates.

24. An appeal shall lie from any order passed by any Magistrate without the said towns and island to the Court of Session to which such Magistrate is subordinate, provided the appeal is made within one month from the date of the order.

Interpretation of terms.

25. In this Act the words "master," "owner," "person," and the pronoun "he" shall be understood to include several persons as well as one person, and females as well as males, and bodies corporate as well as individuals, unless there is something in the context repugnant to such construction.

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* The word "or" has been substituted for the word "and" by Act XII. of 1891 Sch. II.

† Compare 12 & 13 Vic., c. 106, s. 170.

SCHEDULE A.

FORM OF AGREEMENT.

This Agreement made the day of in the year between *A. B.*, of , and *C. D.*, of , witnesseth that the said *A. B.* doth this day bind *E. F.*, a boy (or girl) of the age of years completed, son (or daughter) of the said *A. B.* (or otherwise describing the relation in which *A. B.* and *E. F.* stand), to dwell with and serve the said *C. D.*, as an apprentice, from this day forth for years (in the case of a girl add, or until the time of her marriage, which shall first happen), during all which term the said apprentice shall duly and faithfully serve the said *C. D.* according to his (or her) skill and ability in all lawful business, and demean and behave himself (or herself) honestly, orderly, and obediently, in all things toward the said *C. D.* and his (or her) family. And the said *C. D.* for himself (or herself) and his (or her) executors and administrators, in consideration (of the premium or sum of paid by the said *A. B.* to the said *C. D.*, the receipt whereof the said *C. D.* hereby acknowledges, and) of the faithful service of the said *E. F.*, doth covenant and agree with the said *A. B.*, his (or her) executors and administrators, that he (or she) will teach or cause to be taught to the said *E. F.*, in the best way and manner that he (or she) can, the trade (craft or employment) of a during the said term; and will also, during the said term, find and allow unto the said apprentice good, wholesome, and sufficient food, clothes, lodging, washing, and all other things necessary, fit, and reasonable for an apprentice: (and further, *here insert any special covenants*).

If there is no premium, the word between brackets may be omitted.

In witness whereof the parties have hereunto set their hands and seals, the day and year above written.

A. B. L. S.

C. D. L. S.

SCHEDULE B.

FORM OF ORDER OF ASSIGNMENT.

(To be endorsed on the Agreement.)

Be it known to all men that on the day of in the year personally appeared before *G. H.*, Magistrate of , *C. D.*, of , with *E. F.*, his (or her) apprentice, and *J. K.*, of , and desired that the agreement of apprenticeship, whereby the said *E. F.* was bound to the said *C. D.*, might be assigned and made over to the said *J. K.*, and the said *G. H.* having satisfied himself, by personal examination of the said *E. F.*, and by other lawful ways and means, that such assignment is for the benefit of the said *E. F.*, and is made with the consent of (the said *E. F.*, and of) all persons whose consent thereunto by law is required, doth allow such assignment: and the contract of apprenticeship, whereby the said *E. F.* was on the day of in the year bound to the said *C. D.*, as an apprentice to learn the trade (craft or employment) of a , shall henceforth endure, unto the end of the said term, as if the said *J. K.* had been originally party to the said deed, and had executed the same, in the place and stead of the said *C. D.*, and shall be bound, for himself

If E. F. is not above the age of fourteen years, the words between brackets may be omitted.

Act XX. of 1850.

(or herself) his (or her) executors or administrators, to fulfil the covenants by the said *C. D.* to be performed, and the said *E. F.* shall henceforth be bound unto the said *J. K.*, in like manner as he (or she) was by the said agreement bound unto the said *C. D.*

C. D. *E. F.* *J. K.*

In witness whereof the said *C. D.*, *E. F.*, and *J. K.*, have hereunto set their hands before me the day and year above written.

G. H., Magistrate.

ACT XX. OF 1850.

PASSED ON THE 11TH APRIL 1850.

An Act for settling the boundaries of the Tributary Mahâls in Katak.

Preamble.

WHEREAS certain jangal or hill zamíndárís in the zila of Katak, enumerated in section 36 of Regulation XII., 1805, of the Bengal Code, and the territory of Mayurbhanj in the same zila, were temporarily exempted by the said Regulation from the Regulations relating to the settlement and collection of the public revenue, and by Regulation XIII., 1805, of the Bengal Code, were temporarily exempted from the Laws and Regulations for the maintenance of the police and for the administration of justice in criminal cases; and whereas doubts have been entertained how disputes as to the boundaries of the said zamíndárís are to be determined; It is enacted as follows:—

Trial of certain boundary disputes.

1. Every case in which the boundaries between any of the said zamíndárís or the Qil'as of Baud and Athmallik, and an estate subject to the Regulations of the Bengal Code, shall be in dispute, shall be heard, tried, and determined in the first instance by the Superintendent of the Tributary Mahâls in zila Katak, according to such instructions as he shall, from time to time, receive from the Governor of Bengal, and his award, when confirmed by the Governor of Bengal, shall be final and conclusive, and shall be carried into execution by the Superintendent of Tributary Mahâls by giving possession of the land in dispute to the parties entitled under his award.

ACT XXI. OF 1850.*

Act XXI. of 1850.

PASSED ON THE 11TH APRIL 1850.

An Act for extending the principle of section 9, Regulation VII., 1832, of the Bengal Code, throughout the Territories subject to the Government of the East India Company.

Preamble.

WHEREAS it is enacted by section 9, Regulation VII., 1832,† of the Bengal Code, that "whenever in any civil suit the parties to such suit may be of different persuasions, when one party shall be of the Hindú and the other of the Muhammadan persuasion: or where one or more of the parties to the suit shall not be either of the Muhammadan or Hindú persuasions: the laws of those religions shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled;" and whereas it would be beneficial to extend the principle of that enactment throughout the territories subject to the government of the East India Company; It is enacted as follows:—

Law or usage which inflicts forfeiture of, or affects, rights on change of religion or loss of caste to cease to be enforced.

1. So much of any law or usage now in force within the territories subject to the government of the East India Company, as inflicts on any person forfeiture of rights or property, or may be held in any way to impair or affect any right of inheritance, by reason of his or her renouncing, or having been excluded from the communion

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Act XXI. of 1850 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely:—

Sindh	See *Gazette of India*	Dec. 4, 1880, Pt. I., p. 672.
West Jalpaiguri ...	Ditto	Mar. 5, 1881, Pt. I., p. 74.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	Oct. 22, 1881, Pt. I., p. 504.
The Jhánsi Division ...	Ditto	Aug. 31. 1878, Pt. I., p. 546.
The scheduled portion of the Mirzápur District ...	Ditto	May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	May 31, 1879, Pt. I., p. 382.
The Districts of Pesháwar, Hazára, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán ...	Ditto	Jan. 30, 1886, Pt. I., p. 48.
The District of Lahaul ...	Ditto	May 1, 1886, Pt. I., p. 301.
The Scheduled Districts of the Central Provinces ...	Ditto	Dec. 13, 1879, Pt. I., p. 771.
Coorg ...	Ditto	Dec. 28, 1878, Pt. I., p. 747.
The District of Silhat ...	Ditto	Oct. 4, 1879, Pt. I., p. 631.

It has been extended, under the same Act, to the following Scheduled Districts:—

Kumáon and Garhwál ...	See *Gazette of India*	Nov. 4, 1876, Pt. I., p. 606.
The North-Western Provinces Tárai	Ditto	Sep. 23, 1876, Pt. I., p. 505.

† Repealed by Act VI. of 1871.

Act XXIII. of 1850.

of any religion, or being deprived of caste,* shall cease to be enforced as law in the Courts of the East India Company, and in the Courts established by Royal Charter within the said territories.†

ACT XXIII. OF 1850.‡

PASSED ON THE 8TH JUNE 1850.

An Act for securing the Land-revenue of Calcutta.

WHEREAS it is expedient that the land-revenue accruing due to the East India Company within Calcutta be ascertained and collected in as summary a manner as in other parts of the territories under the government of the East India Company; It is declared and enacted as follows:—

Preamble.

1. All assessable lands, not the property of the East India Company, within the town of Calcutta, of which the rate of assessment is not known, or which have not heretofore been assessed, shall be assessed at the rate of three annas for each kattha.

Assessment of unassessed lands.

2. Lákhiráj tenures of land in Calcutta, of which uninterrupted possession has been held exempt from assessment for sixty years, shall be valid: no other lákhiráj tenures of land in Calcutta shall be deemed valid, unless the same are or shall be held under an unexpired grant from the British Government.

Lákhiráj tenures.

3. If any owner of land within Calcutta, or any person holding land within Calcutta on lease from the East India Company, shall, upon the written demand of the Collector, refuse or neglect to pay any sum at which the land is assessed, or for which he is liable under his lease, the Collector may levy the same by distress and sale of the goods and chattels, wherever found, of such owner or lessee, or, after written demand upon the tenant or occupier, and his refusal or neglect to pay the sum lawfully demanded, by distress and sale of any goods and chattels found upon the land, in the manner appointed for regulating distress for small rents in Calcutta by "the Presidency Small Cause Courts Act, 1882, Chapter VIII.;" § and, for the purpose of any such distress and sale, the Collector shall have all the powers of "the Judges of the Court of Small Causes at Calcutta;" ‖ and the Collector shall have power to appoint any of his officers to perform the duties of bailiffs and appraisers, and of the chief clerk of the said Court,¶ and all the provisions of the said Act relating to "the Judges of the Court of Small Causes

Levy, by distress and sale, of unpaid assessments.

Powers of Collector for distress and sale.

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* 13 Beng. 25, 75-76.

† 9 Moo. I. A. 239.

‡ As to the power of the Collector of Calcutta to entrust any part of his duties under this Act to his Deputy, see Act XVIII. of 1856, s. 3, *infra*.

§ The words quoted have been substituted for the words, "Act I. of 1875," by the Presidency Small Cause Courts Act (XV. of 1882), s. 3.

‖ The words quoted have been substituted for the words, "a Commissioner of the Court for recovery of small debts referred to in the said Act," by the Presidency Small Cause Courts Act (XV. of 1882), s. 3.

¶ Here the words, "as provided by the said Act," repealed by the Presidency Small Cause Courts Act (XV. of 1882), s. 3, have been omitted.

at Calcutta," * and their Court shall be deemed to apply to the said Collector and his office in the execution of this Act.

Deduction by occupier from landlord's rent.

4. In the case of payment by any tenant or occupier not holding immediately under the East India Company, or the seizure and sale of his property, he may deduct the amount of the payment or levy from the next payment of rent to his landlord.

Priority of Government claim.

5. The claim of the East India Company for land-revenue or rent has priority over all other claims upon the land, or to which property distrained upon the land may be liable.

Distress not stayed unless amount lodged.

6. If the Collector's claim for arrears of rent is disputed, the process of distraint and sale shall not be stayed, unless the amount claimed be lodged with the Collector.

Recovery of arrears.

7. Arrears of rent or revenue which shall become due to the East India Company within the town of Calcutta after the passing of this Act shall be recoverable at any time within six years next after the same are due, or next after an acknowledgment of the same in writing has been given by the person by whom the same is payable or his agent, and not afterwards.

Inquiry into claims to hold land lákhiráj.

8. When a claim to hold land lákhiráj or free of assessment shall be set up under this Act, the Collector shall inquire into the claim, taking such evidence as the claimant may offer or the public records supply, and shall report his proceedings and decision in the case for the consideration of the Revenue Commissioner. If the Commissioner is satisfied of the validity of the claim, he shall make an order accordingly, and such order shall be final. If he is not satisfied of the validity of the claim, he shall direct the Collector to assess the land, leaving the claimant to contest the Collector's demand in the Civil Courts as herein provided.

Penalty for obstructing Collector.

9. Any person obstructing or molesting the Collector or any of his subordinate officers in the execution of their duty shall, on conviction before a Magistrate of the town of Calcutta, be liable to a fine not exceeding five hundred rupees, and, in default of payment, to imprisonment in the common jail for a term not exceeding six months, or until the fine is sooner paid.

Power to punish contempts.

10. The Collector may punish any contempt committed in his presence in open kachahrí or office, by fine not exceeding two hundred rupees, and, in default of payment, by imprisonment in the common jail for a term not exceeding one month: from every such order, or fine, or imprisonment, an appeal shall lie to the Commissioner, whose decision shall be final.

Control of Collector.

11. The Collector shall act in the execution of this Act under the usual control of the superior Revenue-authorities.

Bar of jurisdiction of Supreme Court.

12. The ground-rents payable to the East India Company from lands in Calcutta are revenue within the meaning of the Act of Parliament 21 Geo. III., c. 70, and the Supreme Court of Judicature established by Royal Charter at Fort William in Bengal

* The words quoted have been substituted for the words, "the said Commissioners," by the Presidency Small Cause Courts Act (XV. of 1882), s. 3.

Act XXV. of 1850.

has not any civil jurisdiction concerning the said ground-rents, or concerning anything ordered or done in the assessment or collection thereof.

Jurisdiction of Courts of Twenty-four Parganas.

13. All actions concerning any trespass or injury committed by any Revenue-officer acting under colour of this Act, or concerning any claim in respect of any goods taken by, or any monies paid to, any Revenue-officer under this Act, or concerning any claim of rent or revenue on the part of the East India Company under this Act, shall be tried and determined in the Civil Courts established by the East India Company at the sadr station of the Twenty-four Parganas, notwithstanding that the cause of action in respect of which such action is brought arose, or the defendant therein reside, within the limits of the town of Calcutta: and every such action shall be brought within six months after the cause of action arose, and not afterwards.

Limitation.

"Collector," "Commissioner."

14. The words 'Collector' and 'Commissioner' used in this Act shall be taken to mean any person lawfully appointed to exercise the powers of Collector and Commissioner respectively.

ACT XXV. OF 1850*.

PASSED ON THE 14TH JUNE 1850.

An Act for the forfeiture to Government of deposits made on incomplete sales of land under Regulation VIII., 1819.†

Preamble.

WHEREAS patnídárs‡ fraudulently avail themselves of the provision in section 9, Regulation VIII., 1819, of the Bengal Code, § that forfeited deposits at sales of land‖ for arrears of rent shall be applied as if they were purchase-money; It is enacted as follows:—

1. [*Repealed by Act XIV. of 1870.*]

Application of forfeited deposits.

2. Any such forfeited deposit shall be applied to defray the expenses of the sale, and the surplus shall be forfeited to Government.

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* Act XXV. of 1850 has been declared in force by Reg. III. of 1872, s. 3, as amended by Reg. III. of 1886, s. 2, in the Santal Parganas, and under s. 3 of the Scheduled Districts Act (XIV. of 1874) in the Districts of Hazáribágh, Lohárdaga, and Mánbhum, Pargana Dhálbhum, and the Kolhán. It has been repealed, so far as it relates to forfeited deposits of sales of land or any interest in land in execution of decrees, by Act X. of 1861.

† Here the words, "and Act IV., 1846," repealed by Act XII. of 1891, Sch. I., have been omitted; Act IV. of 1846 having been repealed by Act XII. of 1873.

‡ Here the words, "and judgment-debtors," repealed by Act XII. of 1891, Sch. I. have been omitted.

§ Here the words, "and in section 5, Act IV., 1846," repealed by Act XII. of 1891, Sch. I., have been omitted.

‖ Here the words, "in execution of decrees or," repealed by Act XII. of 1891, Sch. I., have been omitted.

ACT XXXIII. OF 1850.*

Act XXXIII. of 1850.

PASSED ON THE 23RD AUGUST 1850.

An Act for amending the forms necessary for the sale of patni-tenures in Bengal.

Preamble.

WHEREAS, by clause 2, section 8, Regulation VIII., 1819, of the Bengal Code, it is provided that zamíndárs shall be entitled in certain cases to apply for the sale of patní-tenures on which the right of sale for an arrear of rent is reserved, by presenting a petition to the Civil Court of the district, and a similar one to the Collector; and whereas the petition to the Civil Court has not been presented previous to many of such sales, and it is not necessary for protection of the patnídár; It is enacted as follows:—

Petition to Collector only sufficient.

1.† It shall not be necessary for the zamíndár in any such case to present a petition to the Civil Court, but a petition to the Collector shall be sufficient.

2 & 3. [*Repealed by Act XIV. of 1870, s. 1.*]

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* Act XXXIII. of 1850 has been declared in force by Reg. III. of 1872, s. 3, as amended by Reg. III. of 1886, s. 2, in the Santal Parganas, and under s. 3 of the Scheduled Districts Act (XIV. of 1874) in the District of Mánbhum.

† In s. 1, the first six words, repealed by Act XVI. of 1874, s. 1, have been omitted.

Act XXXIV. of 1850.

ACT XXXIV. OF 1850.*

PASSED ON THE 23RD AUGUST 1850.

An Act for the better Custody of State Prisoners.†

Preamble.

WHEREAS doubts have been entertained whether State prisoners confined under Regulation III., 1818, of the Bengal Code, can be lawfully detained in any fortress, gaol, or other place, within the limits of jurisdiction of any of the Supreme Courts of Judicature established by Royal Charter, and it is expedient that such doubts be removed, and the powers of the said Regulation extended to all the territories under the government of the East India Company; It is enacted as follows:—

Officers to whom warrant of commitment of State prisoner under Ben. Regulation III. of 1818 may be addressed.

1. The warrant of commitment of any State prisoner, under Regulation III., 1818, of the Bengal Code, may be directed to the Sheriff of the gaol of any of the Supreme Courts of Judicature established by Royal Charter in the said territories, or to the commandant of any fortress, or to the officer in charge of any gaol or other place, in which it is deemed expedient that such State prisoner be confined, in any part of the said territories; and such warrant shall be sufficient authority for the detention of such State prisoner in the fortress, gaol, or other place mentioned in the warrant.

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* Act XXXIV. of 1850 has been declared to be in force in the whole of British India except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh	See *Gazette of India*.	Dec. 4, 1880, Pt. I., p. 672.
Aden	Ditto	June 28, 1879, Pt. I., p. 434.
West Jalpaiguri and the Western Dvárs	Ditto	Mar. 5, 1881, Pt. I., p. 74.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	Oct. 22, 1881, Pt. I., p. 504.
The Jhánsí Division	Ditto	Aug. 31, 1878, Pt. I., p. 546.
The scheduled portion of the Mirzápur district	Ditto	May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	May 31, 1879, Pt. I., p. 382.
The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán	Ditto	Jan. 1, 1886, Pt. I., p. 48.
The District of Lahaul	Ditto	May 1, 1886, Pt. I., p. 301.
The Scheduled Districts of the Central Provinces	Ditto	Dec. 13, 1879, Pt. I., p. 771.
The District of Silhat	Ditto	Oct. 4, 1879, Pt. I., p. 631.

It has been extended, under the same Act, to the following Scheduled Districts:—

Kumáon and Garhwál	See *Gazette of India*.	Nov. 4, 1876, Pt. I., p. 606.
Ajmere and Merwára	Ditto	June 22, 1878, Pt. I., p. 380.
The Andaman and Nicobar Islands	Ditto	Mar. 25, 1882, Pt. I., p. 148.

† See Act III. of 1858, and Act V. of 1871, s. 15. See, too, *Re Ameer Khan*, 6 Ben. 392.

Regulation III. of 1818 extended.

2. Regulation III., 1818, of the Bengal Code, shall be extended and applied to every Sheriff, commandant, or officer, having any State prisoner in custody, under the said Regulation, as explained and extended by this Act.

Act XXXVII. of 1850.

3. [*Repealed by Act XII. of 1891, Sch. I.*]

ACT XXXVII. OF 1850.*

PASSED ON THE 1ST NOVEMBER 1850.

For regulating Inquiries into the Behaviour of Public Servants.

Preamble.

WHEREAS it is expedient to amend the law for regulating inquiries into the behaviour of public servants not removeable without the sanction of Government, and to make the same uniform throughout the territories under the government of ~~the East~~ India ~~Company~~, It is enacted as follows:—

1. [*Repealed by Act XIV. of 1870.*]

Articles of charge to be drawn out for public inquiry into conduct of certain public servants.

2. Whenever the Government shall be of opinion that there are good grounds for making a formal and public inquiry into the truth of any imputation of misbehaviour by any person in the service of the ~~East India Company~~ not removeable from his ~~office~~ without the sanction of the ~~same~~ Government, it shall cause the substance of the imputations to be

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* Act XXXVII. of 1850 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh	See *Gazette of India*	Dec. 4, 1880, Pt. I., p. 672.
West Jalpaiguri	Ditto	Mar. 5, 1881, Pt. I., p. 74.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	Oct. 22, 1881, Pt. I., p. 504.
The Jhánsí Division	Ditto	Aug. 31, 1878, Pt. I., p. 546.
The scheduled portion of the Mirzápur District	Ditto	May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	May 31, 1879, Pt. I., p. 382.
The Districts of Pesháwar, Hazára, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán	Ditto	Jan. 30, 1886, Pt. I., p. 48.
The District of Lahaul	Ditto	May 1, 1886, Pt. I., p. 301.
The Scheduled Districts of the Central Provinces	Ditto	Dec. 13, 1879, Pt. I., p. 771.
The District of Silhat	Ditto	Oct. 4, 1879, Pt. I., p. 631.

It has been extended, under the same Act, to the following Scheduled Districts:—

Kumáon and Garhwál	See *Gazette of India*	Nov. 4, 1876, Pt. I., p. 606.
The North-Western Provinces Tarái	Ditto	Sep. 23, 1876, Pt. I., p. 505.

As to the application of this Act in cases under the Bombay and Madras Civil Courts Acts, see Act XIV. of 1869, s. 33, and Act III. of 1873, s. 20.

Act XXXVII. of 1850.

drawn into distinct articles of charge, and shall order a formal and public inquiry to be made into the truth thereof.

Authorities to whom inquiry may be committed.

3. The inquiry may be committed either to the Court, Board, or other authority to which the person accused is subordinate, or to any other person or persons to be specially appointed by the Government, Commissioners for the purpose: notice of which commission shall be given to the person accused ten days at least before the beginning of the inquiry.

Notice to accused.

Conduct of Government prosecution.

4. When the Government shall think fit to conduct the prosecution it, shall nominate some person to conduct the same on its behalf.

Charge by accuser to be written and verified.

5. When the charge shall be brought by an accuser, the Government shall require the accusation to be reduced to writing, and verified by the oath or solemn affirmation of the accuser, and every person who shall wilfully and maliciously make any false accusation under this Act, upon such oath or affirmation, shall be liable to the penalties of perjury; but this enactment shall not be construed to prevent the Government from instituting any inquiry which it shall think fit, without such accusation on oath or solemn affirmation as aforesaid.

Penalty for false accusation.

Institution of inquiry by Government.

Security from accuser left by Government to prosecute.

6. Where the imputations shall have been made by an accuser, and the Government shall think fit to leave to him the conduct of the prosecution, the Government, before appointing the commission, shall require him to furnish reasonable security that he will attend and prosecute the charge thoroughly and effectually, and also will be forthcoming to answer any counter-charge or action which may be afterwards brought against him for malicious prosecution or perjury, or subornation of perjury, as the case may be.

Power of Government to abandon prosecution, and to allow accuser to continue it.

7. At any subsequent stage of the proceedings the Government may, if it think fit, abandon the prosecution, and in such case may, if it think fit, on the application of the accuser, allow him to continue the prosecution, if he is desirous of so doing, on his furnishing such security as is hereinbefore mentioned.

Powers of Commissioners.

8. The Commissioners shall have the same power of punishing contempts and obstructions to their proceedings as is given to Civil and Criminal Courts, and shall have the same powers for the summons of witnesses, and for compelling the production of documents, and for the discharge of their duty under the commission, and shall be entitled to the same protection as the zila and city Judges, except that all process to cause the attendance of witnesses, or other compulsory process, shall be served through, and executed by, the zila or city Judge in whose jurisdiction the witness or other person resides, on whom the process is to be served, and if he resides within Calcutta, Madras, or Bombay, then through the Supreme Court of Judicature* there. When the commission has been issued to a Court, or other person or persons having power to

Their protection.

Service of their process.

Powers of Courts, &c., acting under commission.

* See 24 & 25 Vic., c. 104, s. 11.

issue such process in the exercise of their ordinary authority, they may also use all such power for the purposes of the commission.

Penalty for disobedience to process.

9. All persons disobeying any lawful process issued as aforesaid for the purposes of the commission shall be liable to the same penalties as if the same had issued originally from the Court or other authority through whom it is executed.

Copy of charge and list to be furnished to accused.

10. A copy of the articles of charge, and list of the documents and witnesses by which each charge is to be sustained, shall be delivered to the person accused, at least three days before the beginning of the inquiry, exclusive of the day of delivery and the first day of the inquiry.

Procedure at beginning of inquiry.

11. At the beginning of the inquiry, the prosecutor shall exhibit the articles of charge to the Commissioners, which shall be openly read, and the person accused shall thereupon be required to plead "guilty" or "not guilty" to each of them, which pleas shall be forthwith recorded with the articles of charge. If the person accused refuses, or without reasonable cause neglects, to appear to answer the charge, either personally or by his Counsel or agent, he shall be taken to admit the truth of the articles of charge.

Non-appearance of accused an admission of charge.

Prosecutor's right of address.

12. The prosecutor shall then be entitled to address the Commissioners in explanation of the articles of charge, and of the evidence by which they are to be proved: his address shall not be recorded.

Evidence for prosecution and examination of witnesses.

Re-examination by prosecutor.

13. The oral and documentary evidence for the prosecution shall then be exhibited: the witnesses shall be examined by, or on behalf of, the prosecutor, and may be cross-examined by, or on behalf of, the person accused. The prosecutor shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter without leave of the Commissioners, who also may put such questions as they think fit.

Power to admit or call for new evidence for prosecution.

Accused's right to adjournment.

14. If it shall appear necessary before the close of the case for the prosecution, the Commissioners may in their discretion allow the prosecutor to exhibit evidence not included in the list given to the person accused, or may themselves call for new evidence, and in such case the person accused shall be entitled to have, if he demand it, an adjournment of the proceedings for three clear days, before the exhibition of such new evidence, exclusive of the day of adjournment and of the day to which the proceedings are adjourned.

Defence of accused.

To be recorded only when written.

15. When the case for the prosecution is closed, the person accused shall be required to make his defence, orally or in writing, as he shall prefer. If made orally, it shall not be recorded; if made in writing, it shall be recorded, after being openly read, and in that case a copy shall be given at the same time to the prosecutor.

Evidence for defence, and examination of witnesses.

16. The evidence for the defence shall then be exhibited, and the witnesses examined, who shall be liable to cross-examination and re-examination and to examination by the Commissioners according to the like rules as the witnesses for the prosecution.

Act XXXVII. of 1850.

17. [*Repealed by Act XII. of 1876.*]

18. The Commissioners or some person appointed by them shall take notes in English of all the oral evidence, which shall be read aloud to each witness by whom the same was given, and, if necessary, explained to him in the language in which it was given, and shall be recorded with the proceedings.

Notes of oral evidence.

19. If the person accused makes only an oral defence, and exhibits no evidence, the inquiry shall end with his defence; if he records a written defence, or exhibits evidence, the prosecutor shall be entitled to a general oral reply on the whole case, and may also exhibit evidence to contradict any evidence exhibited for the defence, in which case the person accused shall not be entitled to any adjournment of the proceedings, although such new evidence were not included in the list furnished to him.

Inquiry when closed with defence.

Prosecutor when entitled to reply and give evidence.

Accused not entitled to adjournment.

20. When the Commissioners shall be of opinion that the articles of charge, or any of them, are not drawn with sufficient clearness and precision, the Commissioners may, in their discretion, require the same to be amended, and may thereupon, on the application of the person accused, adjourn the inquiry for a reasonable time. The Commissioners may also, if they think fit, adjourn the inquiry from time to time, on the application of either the prosecutor or the person accused, on the ground of the sickness or unavoidable absence of any witness, or other reasonable cause. When such application is made and refused, the Commissioners shall record the application, and their reasons for refusing to comply with it.

Power to require amendment of charge and to adjourn.

Reasons for refusing adjournment to be recorded.

21. After the close of the inquiry, the Commissioners shall forthwith report to Government their proceedings under the commission, and shall send with the record thereof their opinion upon each of the articles of charge separately, with such observations as they think fit on the whole case.

Report of Commissioners' proceedings.

22. The Government, on consideration of the report of the Commissioners, may order them to take further evidence, or give further explanation of their opinions. It may also order additional articles of charge to be framed, in which case the inquiry into the truth of such additional articles shall be made in the same manner as is herein directed with respect to the original charges. When special Commissioners have been appointed, the Government may also, if it thinks fit, refer the report of the Commissioners to the Court or other authority to which the person accused is subordinate, for their opinion on the case; and will finally pass such orders thereon as appear just and consistent with its powers in such cases.

Power to call for further evidence or explanation.

Inquiry into additional articles of charge.

Reference of report of special Commissioners.

Final orders.

23. The word 'Government' as used in this Act means the Governor-General in Council, the Governor or Deputy Governor of the Presidency of Fort William in Bengal, the Governor in Council of the Presidencies of Fort St. George and Bombay respectively, and the Lieutenant-Governor of the North-Western Provinces of Bengal, whose sanction is necessary for the removal of the person accused.

'Government' defined.

Saving of enactments as to dismissal of certain officers.

Commission under Act for their trial.

24.* Nothing in this Act shall be construed to repeal any Act or Regulation in force for the suspension or dismissal of Principal and other Sadr Amíns or of Deputy Magistrates or Deputy Collectors, but a commission may be issued for the trial of any charge against any of the said officers, under this Act, in any case in which the Government shall think it expedient.

Saving of power of removal without inquiry under Act.

25. Nothing in this Act shall be construed to affect the authority of Government for suspending or removing any public servant for any cause without an inquiry under this Act.

ACT XLIV. OF 1850.†

PASSED ON THE 27TH DECEMBER 1850.

An Act for consolidating the Board of Customs, Salt, and Opium and the Sadr Board of Revenue in the Lower Provinces of Bengal.

Preamble.

WHEREAS, by Regulation IV., 1819,‡ of the Bengal Code, a Board of Revenue in the Customs, Salt, and Opium Department was constituted in the Province of Bengal, with all the duties, powers, and authorities of the Board of Revenue with respect to customs and town-duties, and with the powers theretofore possessed by the Board of Trade in the Salt and Opium Departments; and whereas it is not now necessary that this Board should be continued separate from the Board of Revenue in the Lower Provinces of Bengal; It is enacted as follows:—

1. [*Repealed by Act XIV. of 1870.*]

Powers of Board of Customs, Salt, and Opium transferred to Sadr Board.

2. All powers and duties now vested in, or belonging to, the Board of Revenue in the Customs, Salt, and Opium Departments and its officers respectively, shall be transferred to the Sadr Board of Revenue constituted in the said Lower Provinces according to Regulation I., 1829, of the Bengal Code, and its officers respectively: and all Acts and Regulations now in force relating to the said Customs, Salt, and Opium Board of Revenue or its officers, shall be understood henceforth as if the said Sadr Board of Revenue and its officers had been respectively mentioned therein instead of the said Board of Customs, Salt, and Opium and its officers.

Style of Board.

3. The said Sadr Board of Revenue shall be henceforth styled the Board of Revenue for the Lower Provinces of the Presidency of Fort William in Bengal.

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* Repealed, as to Lower Provinces and North-Western Provinces of Bengal, by Act XVI. of 1868, s. 1.

† Act XLIV. of 1850 has been declared to apply to the whole of Bengal, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 6; and, under s. 3 of the Scheduled Districts Act (XIV. of 1874), it has been declared in force in West Jalpaiguri, the Districts of Hazáribágh, Lohárdaga, and Mánbhum, Pargana Dhálbhum, and the Kolhán. The Act has been repealed in the territories to which the Assam Land and Revenue Regulation, 1886, extends.—See Reg. I. of 1886, s. 2.

‡ Ben. Reg. IV. of 1819 has been repealed by s. 1 of this Act.

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Act VIII. of 1851.

ACT VIII. OF 1851.*

PASSED ON THE 4TH JULY 1851.

An Act for enabling Government to levy Tolls on public Roads and Bridges.

Preamble.

WHEREAS it is expedient to enable Government to levy tolls upon roads and bridges, It is enacted as follows :—

1. [*Repealed by Act XIV. of 1870.*]

Power to cause levy of tolls on roads and bridges within certain rates:

and to appoint collectors.

Collectors' responsibilities.

2. The Governor of the Presidency of Fort William in Bengal, the Lieutenant-Governor of the North-Western Provinces of Bengal, the Governor of the Presidency of Fort St. George in Council, and the Governor of the Presidency of Bombay in Council, may cause such rates of toll, not exceeding the rates mentioned in the schedule annexed to this Act, as they respectively think fit, to be levied upon any road or bridge which has been, or shall hereafter be, made or repaired at the expense of the Government; and may place the collection of such tolls under the management of such persons as may appear to them proper: and all persons employed in the management and collection of such tolls shall be liable to the same responsibilities as would belong to them if employed in the collection of the land-revenue.

Their powers for recovery of toll.

3. In case of non-payment of any such toll on demand, the officers appointed to collect the same may seize any of the carriages or animals on which it is chargeable or any part of their burden of sufficient value to defray the toll; and, if any toll remains undischarged for twenty-four hours, with the costs arising from such seizure, the case shall be brought before the officer appointed to superintend the collection of the said toll, who may sell the property seized for discharge of the toll, and all expenses occasioned by such non-payment, seizure, and sale, and cause

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* Act XV. of 1864 is to be read with and taken as part of this Act.—See s. 1 of that Act, *infra*.

It has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886.

For power to extend the territorial operation of Act VIII. of 1851, see Act XV. of 1864, s. 3, *infra*.

The Act has been repealed in the Presidency of Bombay by Bombay Act III. of 1875, s. 1.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	See *Gazette of India* .	Oct. 22, 1881, Pt. I., p. 504.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán	Ditto .	Jan. 30, 1886, Pt. I., p. 48.
The District of Lahaul . . .	Ditto .	May 1, 1886, Pt. I., p. 301.

It has been extended, under the same Act, to the Scheduled District of Coorg.—See *Gazette of India*, Jan. 19, 1878, Pt. I., p. 45.

any balance that may remain to be returned, on demand, to the owner of the property; and the said officer, on receipt of the property, shall forthwith issue a notice that, at noon of the next day, exclusive of Sunday, or any close holiday, he will sell the property by auction.

Release of seized property on tender of dues.

Provided that if, at any time before the sale has actually begun, the person whose property has been seized shall tender the amount of all the expenses incurred, and of double the toll payable by him, the said officer shall forthwith release the property seized.

Exemptions from payment of toll.

4. No tolls shall be paid for the passage of troops and military stores and equipages on their march, or of police-officers on duty, or of any person or property in their custody;* but no other exemption from payment of the tolls levied under this Act shall be allowed.

Assistance of collectors by police-officers.

5. All police-officers shall be bound to assist the toll-collectors, when required, in the execution of this Act; and, for that purpose, shall have the same power which they have in the exercise of their common police-duties.

Penalty for offences under Act.

6. Every person, other than the persons appointed to collect the tolls under this Act, who shall levy or demand any toll on any public road or bridge, or for passing through any bázár situated thereon, and also every person who shall unlawfully and extortionately demand or take any other or higher toll than the lawful toll, or, under colour of this Act, seize or sell any property, knowing such seizure or sale to be unlawful, or in any manner unlawfully extort money or any valuable thing from any person under colour of this Act, shall be liable, on conviction before a Magistrate, to imprisonment for any term not exceeding six calendar months, or to fine not exceeding two hundred rupees, any part of which fine may be awarded by the Magistrate to the person aggrieved; but this remedy shall not be deemed to bar or affect his right to have redress by suit in the Civil Court.†

Compensation to person aggrieved.

Saving of his right to sue.

Exhibition of table of tolls, and statement of penalties.

7. A table of the tolls authorized to be taken at any toll-gate or station shall be put in a conspicuous place near such gate or station legibly written or printed in English words and figures, and also in those of the vernacular language of the district, to which shall be annexed, written or printed in like manner, a statement of the penalties for refusing to pay the tolls and for taking any unlawful toll.

Application of proceeds of tolls.

8. The tolls levied under this Act shall be deemed public revenue; but the net proceeds thereof shall be applied wholly to the construction, repair, and maintenance of roads and bridges within the Presidency in which they are levied.

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* For the last 16 words of s. 4, the words, "or of any person or property exempted by order of the Local Government," have been substituted in Upper Burma by the Upper Burma Laws Act (XX. of 1886), s. 7.

† Certain words, repealed by Act XII. of 1876, have been omitted.

Act XII. of 1851.

SCHEDULE.*

On every four-wheeled Carriage on Springs	2 Rupees.
On every two-wheeled Carriage on Springs (except Native Hackeries)	1 Rupee.
On every Native Hackery on Springs	2 Annas.
On every four-wheeled Carriage without Springs	6 Annas.
On every two-wheeled Carriage without Springs	4 Annas.
On every Cart and Hackery not on Springs, and having wheels of less diameter than three feet six inches, and tyres less in breadth than three inches	8 Annas.
On every Cart and Hackery not on Springs, and not having wheels of less diameter than three feet six inches, and tyres less in breadth than three inches	2 Annas.
Buffaloes or Bullocks, per head	6 Pie.
On every Elephant	1 Rupee.
On every Camel	4 Annas.
On every Horse	1 Anna.
On every Tattu	6 Pie.
On every score of Sheep or Goats	2 Annas.
On every herd of Swine, per hundred	4 Annas.
On every Mule	3 Pie.
On every Ass	2 Pie.
On every Palanquin or Tonjon with Bearers	1 Rupee.
On every Palna or small Native Palanquin with Bearers ...	4 Annas.
On every Native Dúli with Bearers	2 Annas.
On every Person carrying a load for hire	2 Pie.

N. B.—Animals drawing any vehicle for which toll can be demanded are not to be also charged with toll.

ACT XII. OF 1851.†

PASSED ON THE 14TH NOVEMBER 1851.

An Act for securing the Land-revenue of Madras.

Preamble.

WHEREAS it is expedient that the land-revenue accruing due to the East India Company at Madras, "within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Madras,"‡ should be ascertained and collected in as summary a manner as in other parts of the territories under the government of the East India Company; It is enacted as follows:—

Assessment of unassessed lands in Madras town.

1. All assessable lands not the property of the East India Company, "within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Madras,"‡ of which the rate of assessment is not known, or which have not heretofore been assessed, shall be assessed at the rates customarily charged upon lands of a similar description in the neighbourhood, according as they may be situated respectively within or without the walls of Black Town.

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* Repealed in places to which Act XV. of 1864 (Tolls on Public Roads and Bridges) has been extended.

† Mad. Act VI. of 1867 is to be read with, and taken as part of, this Act.—See s. 33 of that Act.

‡ The words quoted have been substituted by Act XII. of 1891, Sch. II.

Act XII. of 1851.

2. Lákhiráj tenures of land in Madras, of which uninterrupted possession has been held under alleged grants, exempt or partially exempt from assessment for sixty years, shall be valid; no other lákhiráj tenures of land in Madras shall be deemed valid, unless the same are or shall be held under an unexpired grant from the British Government.

Lákhiráj tenures.

3. The Collector of Madras shall determine the rate of assessment to be laid on assessable land under section one of this Act, with reference to the rate assessed upon other land of a similar description in the neighbourhood, subject to an appeal to the Board of Revenue, to be made within six months from the notification by the Collector of the assessment fixed by him. The decision of the Board of Revenue upon such appeal shall be final.

Rate of assessment.

Appeal.

4. The Collector may order any assessable land, or land already assessed or charged with a rent payable to the East India Company, to be measured, for the purpose of determining the amount of assessment to be imposed, or, in the case of land already assessed or charged with a rent, for the purpose of ascertaining whether the actual dimensions, and the dimensions upon which the amount of assessment or rent was calculated, correspond.

Power to order measurement.

5. Whenever, upon the measurement of any land under the preceding section, it shall be found that the dimensions upon which the amount of assessment or rent was calculated exceed the actual dimensions, a proportionate abatement shall be made for the excess, on the demand of the party entitled to claim it.

Abatement for land assessed beyond actual dimensions.

6. On the other hand, when the actual dimensions exceed the dimensions upon which the amount of assessment or rent was calculated, the excess shall be charged at the same rate as the rest of the land, the possession being left undisturbed: Provided that, when it shall appear that the excess has been caused by the surreptitious usurpation of ground belonging to another tenure, the act of the Collector in assessing it shall not prejudice the holder of such other tenure in any effort he may make to recover the ground usurped from it.

Charge for land in excess of quantity assessed.

Saving of right of holder from whom excess is usurped.

An appeal shall lie to the Board of Revenue against any extra assessment or additional rent charged by the Collector for excess by measurement under this section, if preferred within six months from the date of the Collector's order. Upon such appeal the decision of the Board of Revenue shall be final.

Appeal against extra assessment.

7. [*Repealed by Mad. Act VI. of 1867.*]

8. In the case of payment by any tenant or occupier not holding immediately under the East India Company, or the seizure and sale of his property, he may deduct the amount of the payment or levy from the next payment of rent to his landlord.

Deduction, from landlord's rent, of payment by undertenant.

9. The claim of the East India Company for land-revenue or rent has priority over all other claims upon the land or to which property distrained upon the land may be liable.

Priority of Government claim for land-revenue.

Act XII. of 1851.

Deposit of amount of disputed claim.

10. If the Collector's claim for arrears of rent is disputed, the process of distraint and sale shall not be stayed, unless the amount claimed be lodged with the Collector.

Limitation of claim to arrears.

11. Arrears of rent or revenue due to the East India Company are recoverable within six years next after the same are due, or next after an acknowledgment of the same in writing has been given by the person by whom the same is payable, or his agent, and not afterwards.

Inquiry into claim to hold land rent-free, and report to Board.

12. When a claim to hold land lákhiráj, or free of assessment, shall be set up under this Act, the Collector shall inquire into the claim; taking such evidence as the claimant may offer, or the public records supply; and shall report his proceedings in the case for the consideration of the Board of Revenue.

Procedure thereupon.

If the Board of Revenue are satisfied of the validity of the claim, they shall make an order accordingly, and such order shall be final. If they are not satisfied of the validity of the claim, they shall direct the Collector to assess the land, leaving the claimant to contest the Collector's demand in the Civil Courts, as herein provided.

Penalty for obstructing Collector or his subordinates.

13. Any person obstructing or molesting the Collector or any of his subordinate officers in the execution of their duty shall, on conviction before a Magistrate of the Town of Madras, be liable to a fine not exceeding five hundred rupees, and, in default of payment, to imprisonment in the common gaol for a term not exceeding six months, or until the fine is sooner paid.

Collector's power to punish contempts.

14. The Collector may punish any contempt committed in his presence in open kachahrí or office by fine not exceeding two hundred rupees, and, in default of payment, by imprisonment in the common gaol for a term not exceeding one month.

Appeal from his orders.

From every such order of fine or imprisonment an appeal shall lie to the Board of Revenue, whose decision shall be final.

Control of Collector.

15. The Collector shall act in the execution of this Act under the usual control of the superior revenue authorities.

Exemption of questions relating to ground-rents from civil jurisdiction of Supreme Court.

16. The ground-rents payable to the East India Company from lands in Madras are revenue within the meaning of the Act of Parliament, 21 Geo. III., cap. 70;* and the Supreme Court of Judicature established by Royal Charter at Madras† has not any civil jurisdiction concerning the said ground-rents, or concerning anything ordered or done inthe assessment or collection thereof.

Jurisdiction of Civil Courts in Chingleput in suits against revenue-officers.

17. All actions concerning any trespass or injury committed by any revenue-officer acting under colour of this Act, or concerning any claim in respect of any goods taken by, or any monies paid to, any revenue-officer under this Act, or concerning any claim of rent or revenue on

* See s. 8 of that Statute.

† This provision applies to the present High Court.—See 24 & 25 Vic., c. 104, s. 11.

the part of the East India Company under this Act, shall be tried and determined in the Civil Courts established by the East India Company in the Zila of Chingleput, notwithstanding that the cause of action in respect of which such action is brought arose, or the defendant therein reside, within the limits of the town of Madras, and every such action shall be brought within six months after the cause of action arose, and not afterwards.

Limitation.

18. The words "Collector" and "Board of Revenue" used in this Act shall be taken to mean any person or persons lawfully appointed to exercise the powers vested in the Collector and Board of Revenue respectively under this Act.

"Collector" and "Board of Revenue" defined.

ACT VIII. OF 1852.*

PASSED ON THE 6TH FEBRUARY 1852.

An Act for remunerating the Sheriffs of Calcutta, Madras, and Bombay, for the execution of Mofussil Process under Act XXIII. of 1840.†

FOR making better provision for the Sheriffs of Calcutta, Madras, and Bombay, in remuneration for the execution of legal process issued by Courts out of the said towns respectively, It is enacted as follows :—

Preamble.

1. The several Sadr Courts of the Presidency of Fort William in Bengal, and the Sadr Courts of the Madras and Bombay Presidencies respectively, shall make, and from time to time amend, a table of reasonable fees, to be taken on account of the execution by the Sheriff in such Presidency of any legal process issued by any Court, Judge, or Magistrate, beyond the jurisdiction of the several Supreme Courts established by Royal Charter in Calcutta, Madras, and Bombay, and of the sums to be allowed for costs of advertisements or other notifications of sales of property, according to the amount of the decrees to be satisfied by such sales,—which fees and sums shall be payable by the party applying for the process before it is sent to the Sheriff for execution, and shall be deemed costs in the cause.

Sadr Courts to make and amend table of fees of Sheriffs for executing mofussil process :

and of allowances for advertisements, &c.

By whom and when payable.

2. The said table of fees and sums, when made or amended as aforesaid, shall be submitted by the Sadr Court of the Lower Provinces of the Presidency of Fort William to the Governor of Bengal, and by the Sadr Court of the North-Western Provinces of the said Presidency to the Lieutenant-Governor of those Provinces, and by

Submission of table for approval.

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* Act VIII. of 1852 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

Sindh	See *Gazette of India*.	Dec. 4, 1880, Pt. I., p. 672.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	Oct. 22, 1881, Pt. I., p. 504.

† Act XXIII. of 1840 has been repealed, as to civil processes, by Act X. of 1877, and as to criminal processes, by Act X. of 1882.

Act VIII. of 1852.

the Sadr Courts of Madras and Bombay respectively to the Governor in Council of the Presidencies in which such Courts respectively have jurisdiction, for his approval; and the said table of fees and sums shall have full force and effect, and the fees and sums therein mentioned may be lawfully demanded and taken, from and after the approval thereof by the said Governor, Lieutenant-Governor, or Governor in Council, as the case may be.

When to have force.

3. Every such Court, Judge, and Magistrate, issuing process as aforesaid, shall cause a separate account to be kept of the amount of all fees and sums so paid, and shall, from time to time, as directed by Government, cause the amount thereof to be paid into the local treasury.

Account of fees, &c. Payment into treasury.

4. The Government of each of the Presidencies and provinces aforesaid shall twice in each year account for and pay over to the Sheriff for the time being the amount of fees and sums so paid, after deducting all necessary expenses of receiving and keeping account thereof, and remitting the nett proceeds thereof to Calcutta, Madras, or Bombay, as the case may be; or, where the amount has accrued in the shrievalty of more than one Sheriff, shall apportion the sum paid accordingly between the Sheriff for the time being and the then late Sheriff.

Payment to Sheriff.

5. The said Governments respectively may compound with the Sheriff for a monthly payment to be made to him instead of such fees and sums, and during such composition may appropriate the said fees and sums to the purposes of Government.

Composition with Sheriff.

6. Over and above such fees and sums, or any such monthly payment received instead of such fees and sums, the Sheriff shall be entitled to a fee after the rate of two rupees eight annas for each hundred rupees of the value of any goods or property taken and sold by him in execution of any process issued by any Court, Judge, or Magistrate beyond the local jurisdiction of the said Supreme Courts, which fee shall be taken to cover all expenses connected with the seizure and sale, except the expense of advertisements.

Additional fee for effecting sales.

7. No fee, estimated upon the amount of the sum for which any person is taken in execution, shall be payable to the Sheriffs of Calcutta, Madras, or Bombay, or any of their bailiffs, for taking the body of any person in execution on any process issued by any Court, Judge, or Magistrate out of the local jurisdiction of the said Supreme Courts respectively; but instead thereof, such fees shall be payable to the Sheriff for taking the body of any person in execution of any such process as shall be settled, from time to time, by the Sadr Court as aforesaid.

Fee for execution against person.

8. If any person taken in execution on any such process shall escape out of the legal custody of the Sheriff, the Sheriff shall not be liable to an action of debt for such escape, but shall be liable only to an action upon the case for damages in consequence of such escape sustained by the person or persons at whose suit the prisoner was taken.

Liability of Sheriff in case of escape of person taken in execution.

ACT XI. OF 1852.

Act XI. of 1852.

PASSED ON THE 13TH FEBRUARY 1852.

An Act for the Adjudication of Titles to certain Estates claimed to be wholly or partially Rent-free in the Presidency of Bombay.

Preamble.

WHEREAS in the territories of the Dekkhan, Khandesh, and Southern Mahratta country, and in other districts more recently annexed to the Bombay Presidency, claims against Government on account of inám and other estates wholly or partially exempt from payment of land-revenue, are excepted from the cognizance of the ordinary Civil Courts, ~~and incapable of being justly disposed of under the rules for the determination of titles and the rules of procedure contained in Chapters IX. and X. of Regulation XVII. of 1827* of the Bombay Code and their supplements~~; and whereas it is desirable that the said claims should be tried and determined without further delay; It is declared and enacted as follows:— Repealed

Rules not applicable to certain districts.

1. ~~The rules in Chapters IX. and X. of Regulation XVII. of 1827, and~~ in clause 1 of Regulation VI. of 1833† of the Bombay Code, do not apply to any of the districts of the Bombay Presidency which were not brought under the General Regulations of ~~Government by Regulation XXVIII. of 1827‡ of the Bombay Code~~.

Power to appoint Inám Commissioner, with assistants and establishment.

2. The Governor of Bombay in Council may appoint in any zila or other division of the territories subject to the Presidency of Bombay, which were not brought under the General Regulations of Government by ~~the said~~ Regulation XXVIII. of 1827, an Inám Commissioner, with so many assistants, and such subordinate establishment, as may be necessary for the purposes hereinafter mentioned.

Duties how discharged.

3. The duties of each Inám Commissioner and his assistants shall be discharged according to the rules in Schedule A annexed to this Act.

Determination of titles of claimants to exemption.

4. In the adjudication of claims to exempt lands or interests therein, the titles of claimants shall be determined by the rules in Schedule B annexed to this Act.

Powers to enforce attendance of witnesses, to take evidence, &c.

5. Each Inám Commissioner and his assistants shall have the same authority to procure the attendance of witnesses, and to take evidence, as now is, or from time to time may be, by law vested in the ordinary Civil Courts; and so far as concerns the penalties for not giving evidence, for false testimony, for resistance of process, contempts, and other like matters connected with cases under cognizance by any one of the said officers, his office shall be held to be a Court of civil jurisdiction of the same authority as the superior Civil Court of the zila or district in which his office from time to time shall be established:

Complaints against, or appeals from, proceedings of Commissioner and assistants.

Provided that all complaints against, or appeals from, the proceedings of the Inám Commissioner or any of his assistants, in exercise of the authority conferred on them respectively by this section, shall be made under the sec-

* Repealed by Bom. Act V. of 1879. † Repealed by Bom. Act VII. of 1863.
‡ Repealed by Act XII. of 1873.

Act XI. of 1852.

ond rule of Schedule A annexed to this Act, and shall not be cognizable by any other authority or in any other manner than as therein specified.

6. Bribery, extortion, and generally all acts of abuse or misapplication of authority, or other misconduct, committed by any officer belonging to the establishment of the inám commission, or temporarily employed therein under the provisions of this enactment, shall be punishable as criminal offences with fine and ordinary imprisonment without labour for a period not exceeding five years, and the receipt of a present, directly or indirectly, by any such officer from any person against whom or in whose behalf he may be officially employed, shall be considered extortion.

Punishment of misconduct of officers on commission.

Extortion defined.

And no penalty or punishment adjudicated under this clause shall preclude any other civil prosecution to which the offender may be liable.

Other prosecution not barred.

SCHEDULE A.

Rules for defining the Duties of each Inám Commissioner and his Assistants.

1. The duty of the Inám Commissioner and his assistants shall be to investigate, in the manner prescribed by this enactment, the titles of persons holding or claiming against Government the possession or enjoyment of ináms or jágírs, or any interest therein, or claiming exemption from the payment of land-revenue, and generally to act according to the instructions of Government in all matters not specifically provided for in this enactment.

Duty defined.

2. All orders of the Assistant Commissioners shall be appealable to the Inám Commissioner, who shall also have the authority of revising and of modifying, reversing, or annulling, if necessary, their orders and proceedings, and the orders and proceedings of the Inám Commissioner shall be in like manner appealable to, and subject to modification, reversal, or annulment by, the Governor of Bombay in Council, whose orders shall in every case be final.

Appeal from orders of Assistant Commissioners, and Commissioner.

3. The Inám Commissioner or his assistants shall receive, from the persons holding or claiming to hold lands or any interest therein exempt from the payment of revenue, statements explaining the nature of the title by which the lands or interests are so held, and shall take and record the evidence offered in support of such statements.

Duty to receive statements of title, and record evidence in support.

4. These statements may be received, either directly by the officers of the inám commission, or through the medium of the revenue-authority of the taluqa in which the land or interest so held or claimed as exempt is situated, or in which the alleged proprietor resides, without any previous procedure, except a general invitation to such landholders of a district who shall hold or claim to hold lands exempt as aforesaid to state the nature of their titles.

Statements how received.

5. But when such general invitation is not sufficiently attended to, a notice may be issued to any party holding or claiming to hold any lands or any interest therein wholly or partially exempt as aforesaid, requiring him, personally or by his agent, to show his title.

Notice when to issue.

The notice issued in such cases shall state the nature of the investigation which is intended, and shall call upon the alleged proprietor of the exempt lands or interest held or claimed to be held exempt as aforesaid, to attend, either personally or by an authorized agent, at a specified place, and within a specified period (which shall never be less than two months from the date of the notice being served), to explain the nature of his title to hold such lands or interest exempt as aforesaid, and to produce all the evidence forthcoming to prove it.

Contents of notice.

The notice shall further explain that a failure to comply with its terms will render the land, or interest to which it relates, liable to attachment.

6. The notice shall be served upon the party holding or claiming to hold the land or interest exempt as aforesaid, or, if his place of residence be not known, upon the person acting for him, or, in default of such, upon the person in charge of the land or interest.

Service of notice.

7. If such persons cannot be found, a notice shall be posted in the office of the native revenue-officer of the district, and in the chauŕi, or most public place of the village, where the land or interest under inquiry is situated, calling on any person who may claim as proprietor to appear, either personally or by his agent, to prove his title within six months from the date of the notice, under penalty of the attachment of the land or interest, and on failure of the appearance of a claimant, the land or interest shall be liable to attachment.

Posting notice when landholder not found.

8. The attachment provided for by rules 5 and 7 shall be enforced by the Collector or chief revenue-authority of the district in which the land to which it relates is situated, at the written requisition of the Inám Commissioner or his assistant, which shall be a sufficient warrant to the Collector for the attachment of the land, and for the collection of the rents accruing therefrom on account of Government during its attachment.

Attachment by whom enforced.

9. As soon as possible after the receipt of the statements in each district, and of the evidence by which they are supported, they shall be tested by the entries in the Government-accounts and State-records and by any other evidence procurable, whether in favour of Government or of the claimants, and decisions shall then be passed on them as to the continuance, resumption, or full or partial assessment of the lands.

Procedure on receipt of statements and evidence of title.

10. In cases where the notices provided for in sections 5 and 7 fail to procure the attendance of the persons to whom they are addressed, and no claimant appears to prosecute his claim, the Commissioner or Assistant Commissioner shall proceed to ascertain the facts of the case from such evidence as may be forthcoming or procurable, and shall pronounce such decision thereupon as to him shall seem just regarding the lands or interests to which the notices referred.

Procedure on failure of notice to procure attendance.

11. An attachment enforced under rule 8 shall be removed by the Collector or chief revenue-authority by whom it was made, on receipt of a communication from the Inám Commissioner or his assistant, certifying that he considers the attachment to be no longer necessary; but the rents collected from the land during its attachment shall in no case be

Removal of attachment.

Restoration to proprietor of rents collected.

Act XI. of 1852.

restored to the alleged proprietor, except under the general or special instructions of Government.

Copies of decisions to be delivered to claimants.

12. Certified copies of decisions, made according to the provisions of rule 9, shall be delivered, as soon as possible after each decision is passed, to the persons on whose claims the decision shall have been pronounced, or their agents; and copies of all decisions made in the absence of any claimant, according to the provisions of rule 10, shall be sent to the mámlatdár, or other revenue-manager of the táluq in which the lands to which they relate are situated, who shall deliver them to the parties affected by them, should they be discoverable, or otherwise cause them to be publicly posted in the village to which the lands in question belong.

Copies of decisions made in their absence how dealt with.

Execution of decisions.

13. Decisions affecting any lands or any interests therein passed under this enactment shall be carried into execution by the Collector or chief revenue-authority of the district in which the lands to which they relate are situated, at the requisition of the Inám Commissioner or his assistant, in any manner which may, from time to time, be prescribed by the Governor of Bombay in Council.

Procedure in appeal.

Setting aside decrees.

14. In all cases where a person may be desirous of appealing against any decision of the Inám Commissioner or his assistants, he shall apply by a petition, addressed to the authority by whom, according to rule 2, his appeal is cognizable, which petition shall be presented to such authority within one hundred days from the date of the decree appealed against, a copy of which must accompany the petition of appeal, and no appeal which is not so made shall be admitted, without proof of the existence of a just and necessary cause for its not having been preferred in due time; and it is hereby provided that no decree passed by the Inám Commissioner or any of his assistants shall be liable to be set aside for want of form in the proceedings, but only for matters affecting the justice of the decision.

SCHEDULE B.

Rules for the Adjudication of Titles to Estates claimed as Inám or exempt from Payment of Land-revenue.

Continuance of ináms already declared permanent.

1. All lands held under a specific and absolute declaration by the British Government, or any competent officer acting under it, that they were to be continued, hereditarily or in perpetuity, exempt, wholly or partially, from the payment of revenue, are to be so continued according to the purport of such declaration.

Disposal of question as to competency to make declaration.

Provision 1st.—If any question shall arise as to the competency of the officer to make or give such declaration as aforesaid, the Commissioner or Assistant Commissioner is to suspend his judgment, and report the circumstances of the case to the Governor of Bombay in Council, to whom a power is hereby reserved of determining finally whether such officer was competent to make or give such declaration, and the Commissioner or Assistant Commissioner, upon receiving the determination of the said Governor in Council, shall decide accordingly.

Continuance of holding under sanad declaring it hereditary.

2. Any land held under a sanad declaring it to be hereditary shall be so continued according to the terms of the sanad.

Where granted by competent authority;

Provision 1st.—Provided that the grant was either made, or specifically recognized, by authority competent to alienate Government-revenue in perpetuity, the question of which recognition and competency is to be referred to and determined by Government in the manner prescribed by provision 1st, rule 1.

and conditions of tenure legally observable;

Provision 2nd.—And provided that there be nothing in the conditions of the tenure which cannot be observed without a breach of the laws of the land, or the rules of public decency.

and grant not revoked, disallowed, or altered.

Provision 3rd.—And provided that the grant was not afterwards revoked or disallowed, or an alteration of its terms ordered or recognized by a competent authority.

Continuance of holdings exempt or partially exempt for 60 years before British rule.

3. All lands uninterruptedly held as wholly or partially exempt from assessment for a period of sixty years before the introduction of the British Government, and then in the authorized possession of a grandson in male descent, or male heir of the body of such grandson, of the original grantee, shall continue to be so held so long as there shall be in existence any male heir of the body of the person who was incumbent at the introduction of the British Government, tracing his lineage from such incumbent through male heirs only.

Continuance of holdings so exempt for 40 years.

4. All lands uninterruptedly held as wholly or partially exempt from assessment for a period of forty years before the introduction of the British Government, and then in the authorized possession of a son, or male heir of the body of a son, of the original grantee, are to be continued for one succession further than that of the person who was incumbent at the introduction of the British Government, that is, until the death of his last surviving son.

Authorized possession how proved.

Provision 1st.—The authorized possession contemplated by rules 3 and 4 does not involve the necessity of proving any specific authority from, or recognition by, the Government or paramount Power. The mere entry of the holding, as continued in the genuine accounts of the district-officers (even in those not audited and passed by the Government of the time being), will be sufficient to bring it under the heads of "uninterrupted" and "authorized" so far as regards the purposes of this rule; provided only that there are no entries in the Collectorate-accounts which shew that the holding of such lands exempt as aforesaid must have been unauthorized by the Government or paramount Power.

Prescriptive right of claimant when admissible.

Provision 2nd.—If there be not evidence forthcoming to disprove a claimant's assertion that his holding has been undisputedly enjoyed for the number of years and descents requisite to fulfil the conditions of rules 3 and 4 respectively, his prescriptive right shall be admitted.

Introduction of British Government when to date—

Provision 3rd.—The introduction of the British Government is to be reckoned from the time the East India Company became the Government or paramount authority over each district as regards its inâms. In the territories ceded by, or conquered

Act XI. of 1852.

from, the Peshwa, therefore, whether khalsat mahâls or saranjâms, &c., held exclusive of inâms, &c., the introduction of the British Government will date from the close of that of the Peshwa.

in territories late of Peshwa,

But in case of the lapse of an independent principality, or of a jâgîr more ancient than the Peshwa's government, and over the inâms of which he did not claim any authority, the introduction of the British Government should be reckoned only from the date at which the general management of the districts may have come into the hands of the Company,

in independent principality or jâgîr more ancient than Peshwa's government.

and in case any question shall arise as to the precise date when the East India Company became the Government over any district, or when the general management of any district came into their hands, such question shall be referred to and determined by Government in the manner prescribed by provision 1st, rule 1.

Disposal of question as to date of East India Company acquiring government.

6.* Land held as wholly exempt from payment of revenue, or on partial assessment, the possession of which is not continuable under the preceding rules, is to be resumed on the demise of the incumbent.

Lands resumable on demise of incumbent.

Provision 1st.—In case the incumbent at the time of the introduction of the British Government may have died, the permission to hold for life is to be extended to the person in whose name the land may be continued, when the investigation is commenced, if there be no fraud apparent, nor other reason for withholding this indulgence.

Extension of life-tenure of holding of which incumbent died before British rule.

Provision 2nd.—When land is evidently held by fraud recently committed (as when an inâm which was resumed under the late Government has been re-occupied under the present Government without authority, or as when a pretended inâm is found to have originated since the introduction of this Government with the connivance of district or village-officers), it shall be at once resumed, not being continuable under this or any of the preceding rules.

Resumption of land held by fraud.

7. All lands held for the support of mosques, temples, or similar institutions, of the permanent character of which there can be no doubt, are to be continued permanently, even though their permanent continuance may not have been expressly provided for when they were granted.

Continuance of holdings for support of mosques, temples, &c.

Provisions 1st, 2nd, and 3rd.—The same as the corresponding provisions of rule 2 of this schedule in those cases in which title-deeds or other records proving the circumstances of the original grant, or its specific recognition by competent authority, are forthcoming.

Corresponding provisions of rule 2 applied.

Provision 4th.—When there is no proof forthcoming to shew whether or not an inâm, coming under the provisions of this rule, was granted, or even specially recognized, by a competent authority, still, if it has been undisputedly enjoyed for a period of forty years before the introduction of the

Effect of enjoyment for 40 years where no proof of grant forthcoming.

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* There is no Rule numbered 5.

present Government, it shall be permanently continued, and enjoyment proved by the mere entry of the inám, as continued in genuine accounts of the district-officers (even in those not passed by the Government of the time being), is to be considered sufficiently "uninterrupted" to give an inám the benefit of this provision, if there be no entries in the Government-accounts which shew that it must have been unauthorized by them.

Prescriptive title when admissible where records do not go back enough to test enjoyment for 40 years.

Provision 5th.—If the forthcoming records do not go far enough back to test the existence of enjoyment of the duration contemplated in provision 4th as establishing full prescriptive title in such ináms, still, if so far as they do go, they are not opposed to the claimants' assertion that sufficient enjoyment has taken place, the prescriptive title of the inám shall be admitted according to his assertions, unless there be other evidence forthcoming to disprove them.

Rule where not applicable.

Provision 6th.—The peculiar advantages of this rule shall not apply to the holdings of individuals in their own names for the performance of ceremonial worship, claims to which must be decided under the rules for personal claims.

Adjudication of certain claims coming under rule.

Provision 7th.—When claims of the denomination coming under this rule are found to be unsupported by proof of original valid title, and are proved void of sufficient prescriptive enjoyment, they are to be adjudicated according to rule 6.

Continuance of holdings by official tenure meant to be hereditary.

8. All lands authorizedly held by an official tenure which it is evident from local usage was meant to be hereditary, and has been so considered heretofore, even though there be no sanads declaring it to be so,—for instance, ináms which form the authorized emoluments of any hereditary office, as of kázís, village-joshís, &c., and are not merely personal,—are to be continued permanently.

Corresponding provision of rule 2 applied.

Provisions 1st, 2nd, and 3rd.—The same as the corresponding provisions of rule 2 of this schedule in those cases in which title-deeds or other records, proving the circumstances of the original grant, or its specific recognition by competent authority, are forthcoming.

Continuance of inám enjoyed as official holding during period covered by evidence, though grant or recognition not proved.

Provision 4th.—When there is no proof forthcoming to shew whether or not an inám, coming under the provisions of this rule, was granted or even specifically recognized by competent authority, still, if it has been undisputedly enjoyed as an official, and not merely personal, holding from the earliest period to which the forthcoming evidence does relate, it shall be continued permanently as official emolument, unless the claimant's own statement renders this course improper.

Exemption from rule of emoluments for certain services to State.

Provision 5th.—The provisions of this rule are not in any way to apply to emoluments continued for service performed to the State, as the service watans of desáís, sardesáís, nádgaudas, deshpándes, patels, kulkarnís, mhárs, talaváras, whose claims are to be disposed of according to the rules which are or may be established for the regulation of such holdings.

Length of enjoyment by itself does not entitle to benefit of rule.

Provision 6th.—It is to be understood that mere length of enjoyment of land as inám by an official person is not of itself sufficient to entitle a claim to be brought under this rule.

Act XI. of 1852.

Provision 7th.—If a holding claimed under this rule be found incapable of permanent continuance under it, the claimant shall be allowed the advantages of any of the preceding rules of this schedule which may be applicable to his case.

Benefit of preceding rules when allowable.

9. On the resumption of any lands under the rules of this schedule, a moiety or other portion may be continued to the widows of the last incumbents during their lives, in cases of proved poverty and destitution.

Provision for widows of last incumbents of resumed holdings.

Provision 1st.—In the case of a holding which is recognizable as an hereditary personal inám, the widow of a proprietor who dies without surviving male issue, or other heirs to whom his inám will of necessity descend, is by right his sole heir, and during her life the inám cannot be regarded as having lapsed to Government: it should, therefore, in such a case, be continued undiminished during the widow's life.

Continuance to widow and sole heir of holder of hereditary personal inám.

10. These rules shall not be necessarily applicable to jágírs, saranjáms, or other tenures for service to Government, or tenures of a political nature, the titles and continuance of which shall be determined as heretofore under such rules as Government may find it necessary to issue from time to time.

Exception of certain tenures from application of rules.

11. Any of these rules may be relaxed in favour of claimants under instructions from the Governor of Bombay in Council, in whom shall also be vested the power of interpreting the precise meaning of any of the rules respecting which a question may arise.

Modification in favour of claimants and interpretation of rules.

ACT XXX. OF 1852.*

Act XXX. of 1852.

PASSED ON THE 16TH JULY 1852.

An Act for the Naturalization of Aliens.

WHEREAS it is expedient to provide for the naturalization of aliens resident in the territories under the government of the East India Company, It is enacted as follows :— Preamble.

1. Any person, whilst actually residing in any part of the territories under the government of the East India Company, may present a memorial to Government,† praying that the privileges of naturalization may be conferred upon him. Any resident may petition for naturalization.

2. Such memorial shall state, to the best of the knowledge and belief of the memorialist, his age, place of birth, place of residence, profession, trade, or occupation, the length of time during which he has resided within the said territories, that he is settled in the said territories, or is residing within the same with intent to settle therein, and any other particulars which the Government may require to be stated therein, and such memorial shall be in writing, and signed by the memorialist, and accompanied by an affidavit sworn by him, verifying the truth of the statements contained therein. Contents of petition. Affidavit to accompany.

3. The memorial shall be considered by the Government to whom it shall be presented, who shall inquire into the circumstances of the case, and may require such evidence, either by affidavit or otherwise, as they may deem proper, in addition to the before-mentioned affidavit of the memorialist, to prove the truth of the statements contained in such memorial. Power to require further evidence.

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* Act XXX. of 1852 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

Sindh	See *Gazette of India* .	Dec. 4, 1880, Pt. I., p. 672.
Aden	Ditto .	June 28, 1879, Pt. I., p. 434.
West Jalpaiguri	Ditto .	Mar. 5, 1881, Pt. I., p. 74.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto .	Oct. 22, 1881, Pt. I., p. 504.
The Jhánsí Division	Ditto .	Aug. 31, 1878, Pt. I., p. 546.
The scheduled portion of the Mirzápur District	Ditto .	Mar. 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto .	May 31, 1879, Pt. I., p. 382.
The Districts of Hazára, Peshá-war, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán	Ditto .	Jan. 30, 1886, Pt. I., p. 48.
The District of Lahaul . . .	Ditto .	Jan. 5, 1886, Pt. I., p. 301.
Coorg	Ditto .	May 21, 1881, Pt. I., p. 203.
The District of Silhat	Ditto .	Oct. 4, 1879, Pt. I., p. 631.

† For definition of the word "Government," see s. 12, *infra*.

Act XXX. of 1852.

Issue of certificate granting rights.

4. The Government may, if they shall think fit, issue a certificate in writing, reciting such of the contents of the memorial as they may consider to be true and material, and granting to the memorialist all the rights, privileges, and capacities of naturalization under this Act, except such rights, privileges, or capacities, if any, as may be specially excepted in such certificate.

Filing copy and affidavit.

List of persons naturalized.

5. The certificate shall be delivered to the memorialist, and a copy or duplicate thereof, together with the memorial upon which the same shall be obtained, and any affidavit which may accompany such memorial or be produced in support thereof, shall be filed by the Secretary to the Government, or such other officer as the Government may direct; and such Secretary or officer shall keep an alphabetical list of all persons who may be naturalized by such Government.

Cancelment of certificate for false statement.

Ceasing of rights thereunder.

6. If any material statement contained in such memorial shall be false, the Government may, if they think fit, by an order in writing, declare the certificate issued upon such memorial to be null and void to all intents and purposes, except such purposes, if any, as may be specially excepted in such order; and from and after such order all the rights, privileges, and capacities derived through such certificate shall cease to exist.

Fees.

7. Such fees shall be payable in respect of the proceedings hereby authorized as shall be fixed by the Government.

Rights, &c., derived from certificate.

8. Upon obtaining such certificate, and taking and subscribing the oath as hereinafter prescribed, the memorialist shall, within the said territories under the government of the East India Company, be deemed a natural-born subject of Her Majesty as if he had been born within the said territories, and shall be entitled within the said territories to all the rights, privileges, and capacities of a subject of Her Majesty born within the said territories, except such rights, privileges, and capacities, if any, as may be specially excepted in such certificate.

9. [*Repealed by Act XVI. of 1874.*]

Time for taking oath of allegiance.

10. Within sixty days from the day of the date of such certificate, the memorialist named in such certificate shall take and subscribe the oath contained in the schedule annexed to this Act.

Administration of such oath.

Certificate of subscription of oath.

11. Such oath, as well as any other oath or affidavit required by this Act, may be administered by any Magistrate or Justice of the Peace within the limits of his jurisdiction, or by any other person to be appointed for that purpose by Government; and the person who shall administer the oath mentioned in the schedule to this Act annexed shall grant to the memorialist a certificate in writing of his having taken and subscribed such oath, and of the date of his taking and subscribing the same, and shall forward to the Government the oath so taken and subscribed, together with a duplicate of such certificate, which oath and duplicate certificate shall be filed and kept with the memorial.

Interpretation of "Government" and "Magistrate." Gender.

12. The word "Government" in this Act shall be deemed to mean the person or persons for the time being lawfully entitled to administer the executive government in that part of the said territories in which the memorialist shall reside at the time of presenting such memorial. The word "Magistrate" shall include any person lawfully exercising the powers of a Magistrate, and words denoting the masculine gender shall include the feminine.

Substitution of affirmation for oath or affidavit.

13. In every case in which the word "oath" or "affidavit" is used in this Act, an affirmation to the same effect as the oath or affidavit required shall be sufficient in cases where the person required to make such oath or affidavit shall be a person allowed by law to affirm in civil cases, and in every such case such affirmation shall be made before the person authorized to administer the oath, and the word "oath" or "affidavit," wherever used in this Act, shall include such affirmation.

SCHEDULE.

OATH.

I, A. B., of (*here state the description of the party*) do swear (*or, being one of the persons allowed by law to affirm in civil cases, do affirm*) that I will be faithful and bear true allegiance to the Sovereign of the United Kingdom of Great Britain and Ireland and of these territories.*

(Signed) A. B.

* Certain words, which were repealed by Act XII. of 1876, have here been omitted.

Act II. of 1853.

ACT II. OF 1853.*

PASSED ON THE 4TH FEBRUARY 1853.

An Act to remove doubts as to the liability of all subjects of Her Majesty to the same jurisdictions as natives in respect of public and police duties and public charges incident to the holders of land or their local Agents or Managers.

Preamble.

WHEREAS, by virtue of Act No. IV. of 1837, it is lawful for any subject of Her Majesty to acquire and hold in perpetuity, or for any term of years, property in land, or in any emoluments issuing out of land, in any part of the territories under the government of the East India Company; and whereas doubts have arisen whether all subjects of Her Majesty acquiring or holding property in land, or in any emoluments issuing out of land, or acting as local agents or managers of such property, are subject to the same jurisdictions as natives for enforcing the discharge of public and police duties incident to the holding of such property, or for the enforcement of public charges and assessments upon or in respect thereof; and whereas it is just and reasonable that all persons who may think fit to hold such property, or to be the local agents or managers thereof, should be liable to the public burthens and duties incident thereto, and, in case of neglect or refusal to discharge the same, should be subject to the same jurisdictions as natives; It is therefore declared and enacted as follows:—

Non-exemption from public charges or duties of landholders, &c., by reason of place of birth or of descent.

1. No person whatever, being the owner, holder, or farmer, of any property in land, or in any emoluments issuing out of land, in any part of the said territories, whether in perpetuity or for a term, or being a local agent or manager of any such property, is, by reason of his place of birth, or by reason of his descent, exempt from any public charge or

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* Act II. of 1853 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh	See *Gazette of India*	Dec. 4, 1880, Pt. I., p. 672.
West Jalpaiguri	Ditto	Mar. 5, 1881, Pt. I., p. 74.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	Oct. 22, 1881, Pt. I., p. 504.
The Jhánsí Division	Ditto	Aug. 31, 1878, Pt. I., p. 546.
The scheduled portion of the Mirzápur District	Ditto	May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	May 31, 1879, Pt. I., p. 382.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán	Ditto	Jan. 30, 1886, Pt. I., p. 48.
The District of Lahaul	Ditto	May 1, 1886, Pt. I., p. 301.
The Scheduled Districts of the Central Provinces	Ditto	Dec. 13, 1879, Pt. I., p. 771.
The District of Silhat	Ditto	Oct. 4, 1879, Pt. I., p. 631.

It has been extended, under the same Act, to the Scheduled Districts of Kumáon and Garhwál.—See *Gazette of India*, Nov. 4, 1876, Pt. I., p. 606.

See *supra*, p. 4.

assessment, or from any duty connected with the police, or with the salt or opium revenue, or from any duty whatsoever of a public nature, to which he would otherwise be subject, as the owner or holder of such property, or as a local agent or manager thereof. Act VI. of 1853.

2. For the non-payment of any such public charge or assessment, or for the breach of any such duty as aforesaid, or for any neglect or misconduct in the discharge thereof, every person, whatever may have been his place of birth, or his descent, shall be subject to the same laws, regulations, and procedure, and to the same jurisdictions, as if he were a native of the said territories.

Amenability to laws, &c., for default in respect of such charges and duties.

ACT VI. OF 1853.*

PASSED ON THE 15TH APRIL 1853.

An Act relating to summary suits for arrears of rent, to sales of patní-taluqs and other saleable tenures, and to sales of land in satisfaction of summary decrees for rent.

WHEREAS, by Regulation VIII, 1831,† of the Bengal Code, the hearing and decision of summary suits or claims relating to arrears or exactions of rents were transferred from the Judges of the zila or city Courts to the Collectors of land-revenue of the several districts ;

Preamble.

and whereas, by Regulation VII., 1832,‡ of the Bengal Code, the conduct of sales of patní-taluqs and other saleable tenures under Regulations VIII., 1819, and I., 1820, of the same Code, and the performance of other acts preparatory to, or connected with, such sales, were transferred to the Collector or Deputy Collector of land-revenue or head assistant to the Collector or Deputy Collector, subject to an appeal as therein provided ;

and whereas, by Act VIII., 1835,§ the power theretofore vested in the Judges of the Díwání Adálat of selling land in satisfaction of summary decrees for rent was transferred to the Collectors of land-revenue, and it was enacted that all sales for the recovery of arrears of rent held under clause 7, section 15, Regulation VII., 1799,§ should be conducted by the Collector, his Deputy, or duly authorized Assistant, and that ten days' notice should be given of such sales by advertisement to be stuck up at the kachahrí of the zila Court or local Adálat and that of the Collector ; ‖

and whereas doubts may be entertained as to who ought to exercise the jurisdiction transferred by the above-mentioned Regulations and Acts, where lands situate within the zila or other district of one Collector form part of an entire estate paying revenue to the Collector of another zila or district :

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* Act VI. of 1853 has been declared in force by Reg. III. of 1872, s. 3, as amended by Reg. III. of 1886, s. 2, in the Santal Parganas, and, under s. 3 of the Scheduled Districts Act (XIV. of 1874), in the Districts of Hazáribágh, Lohárdaga, and Mánbhum, Pargana Dhálbhum, and the Kolhán.

† Ben. Reg. VIII. of 1831 has been repealed by Act X. of 1859.

‡ Ben. Reg. VII. of 1832 has been repealed by Act VI. of 1871.

§ Act VIII. of 1835 and Ben. Reg. VII. of 1799 have been repealed by Act XVI. of 1874.

‖ Here certain words, repealed by Act XII. of 1891, Sch. I., have been omitted.

Act VI. of 1853.

In order therefore to avoid such doubts, and also to define who are the proper officers to exercise such jurisdictions in cases where lands are situate in a district assigned to an independent Deputy Collector, and also in cases where lands held in patní or other tenure at one entire rent are situate in two or more collectorates,* It is enacted as follows:—

Conduct of sale of lands when all in one collectorate.

1. If the lands which may be the subject of any such sale, or to the rent of which any such suit may relate, be all situate in one collectorate, the Collector of such collectorate is the Collector to conduct the sale or to hear and decide the suit.

When in two or more collectorates.

If one taluq or tenure shall comprise lands situate in two or more collectorates, or if any lands situate in two or more collectorates be held under one lease or engagement or at one entire rent, the Collector in whose collectorate the greater part of such lands shall be situate is the Collector to conduct the sale of such taluq or tenure or of such lands, and to hear and decide any summary suit relating to arrears or exactions of rent in respect thereof.

Procedure in case of doubt as to officer having jurisdiction.

2. If a Collector to whom application shall be made to exercise any of the powers above-mentioned shall entertain any doubt as to whether the lands or the greater part of them are situate within his collectorate, he shall report the case for the order of the Board to which he is subordinate, and if ordered by such Board to proceed in the matter such order shall be conclusive upon the question of his jurisdiction.

"Collectorate" defined.

3. The word "collectorate" in this Act means the zila or other district to which a Collector is appointed, and no lands situate beyond the limits of such zila or district shall be deemed to be situate within the collectorate, by reason of their forming part of an estate paying revenue to the Collector thereof.

Powers and jurisdiction of independent Deputy Collector.

4. An independent Deputy Collector may, within his deputy collectorate, exercise all the powers and jurisdictions of a Collector with which he may be entrusted, in the same manner and to the same extent as a Collector may do within his collectorate; and with reference to the exercise of such powers and jurisdictions, his deputy collectorate shall be deemed a collectorate, and he shall be deemed to be a Collector within the meaning of this Act.

"Independent Deputy Collector."

5. An independent Deputy Collector is an officer appointed by Government to act as Deputy Collector independently of a Collector, whether his office is one for the receipt of revenue or not.

"Deputy collectorate."

A deputy collectorate is the district within which an independent Deputy Collector is directed by Government to act.

Publication of notice of sale by independent Deputy Collector.

6. In cases of sales by an independent Deputy Collector under the above-mentioned Regulations or Act, any notice thereby required to be stuck up at the kachahrí of the Collector may be stuck up at the kachahrí of the Deputy Collector.

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* Here certain words, repealed by Act XII. of 1891, Sch. I., have been omitted.

Act XI. of 1853.

7. An independent Deputy Collector may exercise the powers assigned to him over any part of his deputy collectorate in public kachahrí, in whatever part of his deputy collectorate the same may be situate or held.

Exercise of powers of independent Deputy Collector.

8. Any notice required by the above-mentioned Regulations or Act to be given by advertisement to be stuck up at the kachahrí of the zila Court or local Adálat, shall be stuck up at the zila Court or local Adálat within the jurisdiction of which the lands to be sold, or the greater portion of them, as the case may be, shall be situate.

Publication of notice required by law to be advertised.

9. [*Repealed by Act XII. of 1873.*]

10. [*Repealed by Ben. Act VIII. of 1865, s. 2.*]

ACT XI. OF 1853.

PASSED ON THE 15TH JULY 1853.

*An Act to facilitate the removal of nuisances and encroachments below high-water mark in the Islands of Bombay and Kolába.**

WHEREAS there is a large sea-shore in the Islands of Bombay and Kolába, and it is expedient, with a view to the safe navigation of the harbour of Bombay, and to the public interests generally, to facilitate the removal of nuisances, obstructions, and encroachments below high-water mark in the said harbour, or upon or about the shores of the said islands; It is enacted as follows:—

Preamble.

1. It shall be lawful for the Collector of land-revenue at Bombay to give notice requiring the removal of any nuisance, obstruction, or encroachment any where below high-water mark in the said harbour of Bombay, or upon or about the shores of the said islands; such notice shall be given by affixing the same in some conspicuous place on or near to the encroachment, obstruction, or nuisance complained of, and by publication thereof in the *Bombay Government Gazette*, and shall state that, unless the nuisance, obstruction, or encroachment be removed or abated within one month, the same will be removed or abated by the said Collector; such notice may be in the form No. 1 in the schedule to this Act annexed or to the like effect.

Power to give notice to remove nuisance.

Mode of giving notice.

Contents.

Form.

2. If any person shall deny the right of the said Collector to effect such abatement or removal, he shall, within one month after such notice shall have been given as aforesaid, apply to the Supreme Court of Judicature at Bombay, by petition, setting forth the grounds of his alleged right, and praying that the said Collector may be restrained from causing such abatement or removal, and the said Court may thereupon (on the petitioner's giving sufficient security for costs), fix a time for hearing and adjudicating upon such petition, and give such directions and make such orders as the said Court may think just, and the said Court may also make an order for

Petition by person denying right to remove nuisance.

Procedure thereupon.

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* Repealed by Act XXII. of 1855, so far as relates to the removal of any obstruction, impediment, or public nuisance affecting, or likely to affect, the Port of Bombay.

Act XI. of 1853.

restraining the alleged nuisance, obstruction, or encroachment from being extended, or from being abated or removed by the said Collector, until after adjudication upon the said petition, or the dismissal thereof for want of prosecution.

Onus of proving right.

3. Upon the hearing of every such petition, the onus of proving the alleged right shall be on the petitioner.

Limitation of time for petition.

4. No person shall be allowed, after the expiration of such period of one month, to present any such petition as aforesaid, unless on satisfactorily accounting to the said Court for the delay.

When Collector may cause removal of nuisance.

5. If no such petition shall be presented within the said period of one month, or if the same be presented and determined against the right of the petitioner, or be dismissed for want of prosecution, it shall be lawful for the Collector to cause such abatement or removal as aforesaid by any person or persons to be authorized by warrant under his hand, and such warrant may be in the form No. 2 in the schedule to this Act annexed, or to the like effect; and the said Collector, and any person acting under his warrant, shall not be answerable for any damage unavoidably occasioned in the removal of any such nuisance, obstruction, or encroachment.

Form of warrant.

Indemnity.

Power to sell materials of encroachment.

6. The said Collector may sell the materials of any encroachment or obstruction removed under this Act, and may apply the proceeds of sale in or towards payment of the expenses of the removal, and if any surplus shall remain, the same shall be forfeited, and be paid and applied in such manner as the Governor of Bombay in Council shall direct.

Saving of rights of Crown.

7. Nothing in this Act shall prejudice or affect the rights of the Crown in any part of the said harbour, or of the sea-shore of the said islands, or preclude or interfere with any such proceedings, civil or criminal, for abating such nuisances and encroachments, as aforesaid, as might have been had if this Act had not been passed.

"High-water mark" defined.

8. The words "high-water mark" in this Act shall mean the ordinary line of high-water at monsoon tides.

SCHEDULE.

FORM No. 1.

NOTICE is hereby given by the Collector of land-revenue in Bombay, under Act XI. of 1853, that (*describe the encroachment*) is to be removed or abated within one month from the date hereof, otherwise the same will be removed or abated by the said Collector under the authority of the said Act.

Dated the day of in the year of our Lord

(Signature of Collector.)

FORM No. 2.

THIS warrant, granted by the Collector of land-revenue in Bombay, under Act XI. of 1853, is to authorize of to remove (*describe encroachment*).

Dated (*Signature of Collector.*)

ACT XIX. OF 1853.

PASSED ON THE 2ND DECEMBER 1853.

An Act to amend the law of evidence in the Civil Courts of the East India Company in the Bengal Presidency.

1 to **18**. [*Repealed by Act X. of 1861, s. 1.*]

19. [*Repealed by Act I. of 1872, s. 2.*]

20 to **25**. [*Repealed by Act X. of 1861, s. 1.*]

Person absconding, &c., to avoid service of summons, &c., liable for damages.

26.* Any person, whether a party to the suit or not, to whom a summons to attend and give evidence or produce a document shall be personally delivered, and who shall, without lawful excuse, neglect or refuse to obey such summons, or who shall be proved to have absconded or kept out of the way to avoid being served with such summons, and any person who, being in Court, and upon being required by the Court to give evidence or produce a document in his possession, shall, without lawful excuse, refuse to give evidence or sign his deposition, or to produce a document in his possession, shall† be liable to the party at whose request the summons shall have been issued, or at whose instance he shall be required to give evidence or produce the document, for all damages which he may sustain in consequence of such neglect or refusal, or of such absconding or keeping out of the way as aforesaid, to be recovered in civil action.

27 to **39**. [*Repealed by Act X. of 1861, s. 1.*]

40. [*Repealed by Act X. of 1855, s. 1.*]

41 to **44**. [*Repealed by Act X. of 1861, s. 1.*]

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* S. 26 of this Act has been declared to apply to the whole of Bengal, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 6; and, under s. 3 of the Scheduled Districts Act (XIV. of 1874), it has been declared in force in West Jalpaiguri, the Western Dvárs, the Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum; also in the District of Silhat.

S. 26 was also declared, by the Laws Local Extent Act (XV. of 1874), s. 7, to be in force in the whole of the N.-W. Provinces, except the Scheduled Districts. It has been declared, by notification under the Scheduled Districts Act (XIV. of 1874), to be in force in Kumáon and Gárhwal, in the scheduled portion of the Mirzápore District, and in Jaunsar Báwar, and has been extended, by notification under the same Act, to the Tarái Parganas.

For declaration as to s. 26 being in force in Oudh, see the Oudh Laws Act (XVIII. of 1876), s. 3 (*e*), *infra*.

† Here the words, "in addition to any proceedings under this Act," repealed by Act XII. of 1891, have been omitted.

Act XX. of 1853.

ACT XX. OF 1853.*

PASSED ON THE 8TH DECEMBER 1853.

An Act to amend the law relating to Pleaders in the Courts of the East India Company.

Preamble.

WHEREAS it is expedient to amend the law relating to Pleaders in the Courts of the East India Company; It is enacted as follows:—

1. [*Repealed by Act XIV. of 1870.*]

Pleader not bound to attend Court except at hearing of cause in which he is employed.

2. No pleader shall be bound to attend in any of the Courts of the East India Company on any day fixed for the transaction of civil business, or to notify to the Court his inability to attend, unless he shall be employed in some cause or business which, according to the practice of the Court, may be heard or transacted therein on that day, anything in any law or regulation to the contrary notwithstanding.

Right of Supreme Court attorneys to plead in all Sadr Courts.

3. Every attorney on the roll of any of Her Majesty's Supreme Courts of Judicature in India shall be entitled as such to plead in any of the Sadr Courts of the East India Company, subject, however, to all the rules for the time being in force in the said Sadr Courts respectively, applicable to barristers pleading therein, whether relating to the language in which the Court is to be addressed or to any other matter.

Barristers and attorneys of Supreme Courts not required to produce certificate of character, &c.;

4. That part of section 4, Act No. I. of 1846, which provides that no person shall be admitted a pleader in any of the Courts of the East India Company, unless he have obtained a certificate in such manner as shall be directed by the Sadr Courts that he is of good character and duly qualified for the office, shall not extend to barristers or attorneys of any of the said Supreme Courts; but every such barrister and attorney

but may plead in all subordinate Courts.

shall be entitled as such to plead in any of the Courts of the East India Company subordinate to the Sadr Courts, subject to all the rules in force in the said Subordinate Courts respectively applicable to pleaders therein, so far as such rules relate to the language in which the Court is to be addressed or to any other matter connected with pleading therein.

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* Act XX. of 1853 has been declared to be in force in the Madras and Bombay Presidencies, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), ss. 4, 5.

The Act has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the Scheduled District of Sindh.—See *Gazette of India*, Dec. 4, 1880, Pt. I., p. 672.

It has been repealed in places to which the Pleaders, Mukhtárs, and Revenue Agents Act (XX. of 1865) is extended (see s. 3 of Act XX. of 1865), and in places to which the Legal Practitioners Act (XVIII. of 1879) applies (see s. 9 of Act IX. of 1884).

ACT XVI. OF 1854.*

RECEIVED THE G.-G.'S ASSENT ON THE 28TH JULY 1854.

An Act to amend Regulation XI. of 1831 of the Bengal Code.

WHEREAS the provisions of section 3 and section 7 of Regulation XI., 1831, have been found inconvenient; and whereas it is expedient that Regulation XI., 1831, as amended by this Act, should be extended to the whole of the Province of Benares; It is enacted as follows:—

1. [*Repealed by Act XIV. of 1870.*]

Dároghas of police subject to tahsíldárs.

2. Wherever any tahsíldár shall have police-jurisdiction under the provisions of section 2 of the said Regulation XI., 1831, every dárogha of police hereafter appointed within the local limits of the police-jurisdiction of such tahsíldár shall be subordinate to, and subject to the control of, such tahsíldár, in his capacity of chief police-thánádár.

Regulation XI., 1831, as amended, extended to Benares.

3. Regulation XI., 1831, as amended by this Act, shall extend to the whole of the Province of Benares, and all powers vested by the said Regulation in the Governor-General in Council may be exercised by the Lieutenant-Governor of the North-Western Provinces.

ACT XX. OF 1854.

RECEIVED THE G.-G.'S ASSENT ON THE 26TH AUGUST 1854.

An Act to amend Regulation XIII. of 1833 of the Bengal Code.

Preamble.

WHEREAS it is expedient to amend the provisions of Regulation XIII. of 1833† of the Bengal Code, It is enacted as follows:—

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* Act XVI. of 1854 was declared to be in force in the whole of the North-Western Provinces, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 7. It has been declared, by notification under the Scheduled Districts Act (XIV. of 1874), to be in force in Kumáon and Garhwál, the Tarái Parganas, the scheduled portion of the Mirzápur District, and Jaunsar Báwar.

† Ben. Reg. XIII. of 1833 has been repealed by Act XII. of 1876. Ss. 3 and 4 of the Regulation are as follow:—

"3. The under-mentioned tracts of country at present included in the districts of Rámgarh, Jangal Maháls, and Mednípur, shall be separated from those districts, and the operation of the rules for the administration of civil and criminal justice, as well as those for the collection of the land-revenue, customs, ábkárí, and stamp-revenue, together with all other rules contained in the Regulations printed and published in the manner prescribed by Regulation XLI., 1793, is suspended, and shall cease to have effect therein from the date specified in the preamble of this Regulation, except as hereinafter provided:—

In the district of Rámgarh,—Chutiá Nágpur, Palámu, Kharagdihá Rámgarh, Kundá.

In the district of Jangal Maháls,—all the maháls at present comprised in this district, except the following:—Sáinpahári, Shérgarh, Bishanpur.

In the district of Mednípur,—Dhálbhúm, including Ghátsilá.

"4. The administration of civil and criminal justice, the collection of revenue, the superintendence of the police, of the land-revenue, customs, ábkárí, stamps, and every branch of government within the tracts of country separated as prescribed in the foregoing section, shall be vested in an officer appointed by the Governor-General in Council to be denominated Agent to the Governor-General.

Act XXIV. of 1854.

Repeal in part of Regulation XIII. of 1833.

1. So much of the said Regulation as prescribes that the officer in whom the duties specified in section 4 of the said Regulation shall be vested, shall be denominated "Agent to the Governor-General," is repealed.

Officer appointed by Local Government may exercise all powers by Regulation vested in Agent to Governor-General.

2. Such duties shall be vested in any officer whom the Local Government shall, from time to time, appoint for that purpose, and such officer, when appointed, and his assistants respectively, may exercise, within the tracts of country separated as prescribed in the said Regulation, all the powers which, by the said Regulation, the Agent to the Governor-General and his assistants respectively may exercise; and all the provisions in the said Regulation relating to the Agent to the Governor-General and his assistants shall be applicable to the officer to be appointed as foresaid and his assistants respectively.

ACT XXIV. OF 1854.

RECEIVED THE G.-G.'S ASSENT ON THE 28TH OCTOBER 1854.

An Act to prohibit the possession of certain offensive weapons in Malabar.

Preamble.

WHEREAS it is expedient to prohibit the possession of certain offensive weapons in the District of Malabar, in the Presidency of Fort St. George; It is enacted as follows:—

Use of war-knives prohibited.

1. The use of the Ayudha Katti or war-knife, or of any similar offensive weapon, is hereby prohibited throughout the District of Malabar.*

Fine for possessing, purchasing, &c., war-knives.

2.* Any person who shall be found in possession of an Ayudha Katti or war-knife, or of a similar offensive weapon, or who shall purchase, or sell, or manufacture, or cause to be manufactured, any Ayudha Katti or war-knife, or similar weapon, shall be liable, on conviction before a Magistrate, to a fine not exceeding fifty rupees, or to imprisonment, with or without hard labour, for a period not exceeding six months, or to both; and the said war-knife or weapon shall be confiscated.

Power to search for war-knives.

3. It shall be lawful for the Magistrate of Malabar to cause search to be made by his police-officers, acting under his warrant, in any house or other place in which any Ayudha Katti or war-knife, or any similar offensive weapon, may be supposed to be contrary to this Act; and any such Ayudha Katti or war-knife which shall be found may be seized and confiscated.

It shall also be competent to the Magistrate, at his discretion, to delegate to any of his European assistants the powers conferred by this section.

Penalty for resisting search.

Any person who shall resist or oppose such search or seizure, or forcibly withstand any police-officer charged with such warrant, shall be liable to the same penalties as if such person had opposed or resisted the execution of a warrant for the search after stolen goods.

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* Certain words, repealed by Act XIV. of 1870, have here been omitted.

ACT XXVI. OF 1854.

Act XXVI. of 1854.

RECEIVED THE G.-G.'S ASSENT ON THE 11TH NOVEMBER 1854.

*An Act for making better provisions for the Education of Male Minors subject to the superintendence of the Court of Wards.**

WHEREAS the existing laws are found insufficient to ensure the proper education of male minors subject to the superintendence of the Court of Wards, and it is expedient to make further and better provision for the education of such persons; It is enacted as follows:—

Preamble.

1. The general superintendence and control of the education of every male minor, whose property has been, or shall be, brought under the management of the Court of Wards in and for any part of the Presidency of Fort William by virtue of any Act or Regulation which now is, or hereafter shall be, in force, is hereby vested in the Collector of Revenue, acting under the said Court of Wards, in the zila or district wherein such minor's estate is situate; or, if such minor is possessed of immoveable property in different districts, in such one of the Collectors of Revenue of such districts as the said Court of Wards shall select.

General control of education of male minor wards vested in Collectors.

2. It shall be lawful for every Collector of Revenue, in whom the superintendence of the education of any minor is vested by this Act, to direct that such minor shall reside, either with or without his guardian, at the sadr station of the district, or at any other place within the said Presidency, and shall attend, for the purposes of education, such school or college as to the said Collector may seem expedient; and to make such provision as may be necessary for the proper care and suitable maintenance of the said minor whilst attending such school or college.

Power to cause male minor wards to be educated at any school or college.

3. If it shall appear to the Collector inexpedient to place any such minor at a school or college, he shall, if the proceeds of the estate are sufficient for that purpose, cause such minor to be educated by a private tutor, properly qualified, either at the family-residence of such minor, or at the sadr station, or elsewhere within the said Presidency; and in that case also the Collector shall have power to determine from time to time the place of residence of such minor, and to make such provision as may be necessary for his proper tuition and maintenance during the period of his education.

Or to cause wards to be educated privately.

4. All charges and expenses which may be incurred on account of any male minor ward under the provisions of this Act, for college or school-fees, or for other charges of tuition or education, or by reason of his residence in any place other than his own home or otherwise, shall be defrayed from the profits of his estate in the same manner as other expenses incurred under the authority or with the sanction of the Court of Wards.

Expenses incurred under Act to be paid out of profits of ward's estate.

5. It shall be lawful for the Court of Wards, on the application of a Collector, to remove from office any guardian who shall neglect or refuse to obey, or shall evade compliance with, any orders passed, or directions given,

Court of Wards may remove guardians for disobedience to Collector's orders.

* See Act IV. of 1872, s. 38.

Act XXVI. of 1854.

by such Collector under the provisions of this Act, and to cause a new guardian to be appointed in his place, whether the person so removed shall have been first invested with the guardianship of the minor upon the nomination of a Collector acting under the Court of Wards, or by a testamentary appointment confirmed by the Court of Wards;

and if, in any such case, the guardian to be removed shall be also the manager of the minor's estate, it shall be lawful for the Court of Wards, at its discretion, either to remove him from both the said offices, or to continue him in that of manager only.

Continued liability of guardian removed: powers and responsibilities of new guardian.

6. The guardian so removed shall, notwithstanding his removal, continue liable to disbursements during the period of his guardianship:

and every guardian appointed in the place of a guardian so removed shall be chosen in the same way, and shall have the same rights and powers, and be subject to the same responsibilities, as persons originally appointed to be guardians of minors by a Collector of Revenue acting under the Court of Wards.

Right to custody of person of male minor vested in guardian appointed by Court of Wards, or in Collector.

7. The right to the custody of the person of any male minor whose property is under the management of the Court of Wards is hereby vested in the person appointed, with the sanction of the Court of Wards, either originally or upon the removal of a former guardian, to be the guardian of such minor, or, in the absence of any such person, in the Collector of Revenue having the superintendence of the education of such minor under the provisions of this Act.

Appeal from orders of Collector to lie to Commissioner acting as Court of Wards.

8. All orders and proceedings of a Collector under the provisions of this Act shall be subject to the revision of the Court of Wards, and every person aggrieved by any such order or proceeding may prefer an appeal therefrom to the Commissioner of Revenue acting as a Court of Wards in and for the division to which such Collector belongs.

ACT XXXI. OF 1854.*

Act XXXI. of 1854.

RECEIVED THE G.-G.'S ASSENT ON THE 16TH DECEMBER 1854.

An Act to simplify the modes of conveying land in cases to which the English Law is applicable.

WHEREAS it is expedient, in cases to which the English law applies, to simplify the modes of conveying land, and to exempt the purchasers of trust-property from the liability to see to the application of the purchase-money; It is enacted as follows:—

Preamble.

1. [*Repealed by Act XIV. of 1870.*]

2. Every tenant in tail or other owner of an estate of inheritance less than an estate in fee simple, either at law or in equity, in any lands or hereditaments, not being under any disability, shall have power to dispose of such lands and hereditaments against the issue in tail, and all persons whose estates are to take effect after the determination or in defeasance of his own, or to enlarge his said estate into an estate in fee simple, by any deed declaring an intention so to dispose of the said lands or hereditaments, or to enlarge his estate therein; and every tenant in tail or other owner of an estate of inheritance less than an estate in fee simple, who shall be under the disability of coverture, shall have power to dispose of or enlarge her said estate in manner aforesaid, by any deed declaring her intention so to do, and acknowledged by her as hereinafter mentioned.

Tenant in tail may dispose of or enlarge his estate by, &c.

Provided that every disposition under this section shall be subject to the rights of all persons in respect of estates prior to the estate tail or other estate of inheritance which is the subject of such disposition, and the rights of all other persons, except those against whom such disposition is by this Act authorized to be made.

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* Act XXXI. of 1854 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh	See *Gazette of India*.	Dec. 4, 1880, Pt. I., p. 672.
West Jalpaiguri	Ditto	Mar. 16, 1881, Pt. I., p. 74.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	Oct. 22, 1881, Pt. I., p. 504.
The Jhánsí Division	Ditto	Aug. 31, 1878, Pt. I., p. 546.
The scheduled portion of the Mirzápur District	Ditto	May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	May 31, 1879, Pt. I., p. 382.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán	Ditto	Jan. 30, 1886, Pt. I., p. 48.
The Scheduled Districts of the Central Provinces	Ditto	Dec. 13, 1879, Pt. I., p. 771.
The District of Silhat	Ditto	Oct. 4, 1879, Pt. I., p. 631.

It has been declared, under the same Act, not to be in force in the Scheduled District of Lahaul.—See *Gazette of India*, May 1, 1886, Pt. I., p. 301.

Act XXXI. of 1854.

Married woman, with husband's concurrence, may dispose of her estate by deed acknowledged.

3. Every married woman who, either alone, or jointly with her husband, is possessed of, or entitled to, any estate or interest in, or any power to be exercised over, any lands or hereditaments, which, but for the passing of this Act, she might have disposed of or extinguished by levying a fine, or suffering a recovery, or by joining in either of such assurances, shall have power by deed, to be acknowledged by her as hereinafter mentioned, to dispose of, release, surrender, or extinguish, any such estate, interest, or power, as fully and effectually as if she were an unmarried woman.*

Ss. 2 & 3 to apply to money subject to be invested in land.

4. The provisions of the last two preceding sections shall, so far as circumstances will admit, apply to money subject to be invested in lands or other hereditaments.

Execution of deeds by married woman.

5. No deed to be executed by a married woman under the provisions hereinbefore contained shall, so far as regards the interest of such married woman, be valid or effectual unless her husband concur therein, nor unless the deed be acknowledged in manner hereinafter prescribed before a Judge of one of Her Majesty's Supreme Courts, or before a Judge or other covenanted officer of the East India Company exercising civil jurisdiction in the place wherein such deed shall be acknowledged, or before some Commissioner appointed either specially for the occasion, or appointed as a permanent Commissioner by one of Her Majesty's said Courts to take such acknowledgments.†

If husband be lunatic, &c., Court may direct acknowledgment by deed without his concurrence, saving right of the husband, &c.

6. If the husband of any married woman, desirous of enlarging, passing, or destroying any estate, interest, or power, by a deed to be acknowledged by her under this Act, shall be a lunatic, idiot, or of unsound mind, whether he shall have been found such by inquisition or not, or from any other cause shall be incapable of executing a deed, or if his residence shall not be known, or if he shall be in prison, or living apart from his wife either by mutual consent or by sentence of divorce, or in consequence of his being transported beyond the seas, or from any other cause whatever, it shall be lawful for any of Her Majesty's said Courts, by an order to be made in a summary way upon the application of such married woman, and upon such evidence as to the Court shall seem meet, to dispense with the concurrence of her husband in the deed so to be acknowledged; and any deed to be executed or acknowledged by her in pursuance of such order shall (but without prejudice to the rights of her husband as then existing, independently of this Act) be as valid and effectual as if he had concurred therein.‡

Supreme Courts may appoint Commissioners to take such acknowledgments.

7. It shall be lawful for any of Her Majesty's said Courts to appoint by its order, under the seal of the Court, to be published in the Government Gazette or otherwise as the Court shall direct, permanent Commissioners either by name or office, and to appoint from time to time, under special commissions, special Commissioners, any one of whom shall be authorized and empowered unless the act is directed to be done before more than one, to take the acknowledgment of any deed by any married woman, who, by reason of her place of residence, or ill-health, or other sufficient cause, shall be unable to make such acknowledgment before one of the Judges or other officers described in the preceding section.

* See 3 & 4 Wm. IV., c. 74, s. 77. † See 3 & 4 Wm. IV., c. 74, s. 79.
‡ See 3 & 4 Wm. IV., c. 74, s. 91.

8. Every such Judge, officer, or Commissioner as aforesaid, before he shall receive the acknowledgment by any married woman of any deed to be acknowledged by her under this Act, shall examine her apart from her husband touching her knowledge of such deed, and shall ascertain whether she understands its object, and freely and voluntarily consents to the same, and unless she appears to understand its object, and freely and voluntarily to consent to such deed, he shall not permit her to acknowledge the same, and in such case, such deed, so far as relates to the execution thereof by such married woman, shall be void.*

Examination of married woman apart from her husband.

9. Every Judge, officer, or Commissioner taking such acknowledgment under this Act, shall, at the time of taking the same, sign a memorandum to be endorsed on or written at the foot, or in the margin of such deed, which memorandum shall be to the following effect, namely, "This deed, marked ( ), was this day produced before me and acknowledged by therein named, to be her act and deed, previous to which acknowledgment the said was examined by me separately and apart from her husband, touching her knowledge of the contents of the said deed, and her consent thereto, and appeared to understand the same, and declared the same to be freely and voluntarily executed by her."†

Judge, &c., to sign memorandum of acknowledgment.

10. Every deed executed by a married woman, and hereby required to be acknowledged, shall, so far as regards the interest of such married woman, take effect only from the time of the acknowledgment thereof.

Deed of married woman when to take effect.

11. It shall not be necessary for any person producing a deed so acknowledged in any Court of Justice to prove the handwriting or authority of the Judge or other officer, or the Commissioner taking such acknowledgment; but if such memorandum purports to have been in substance regularly made and signed, the deed shall be presumed to have been duly acknowledged by the party, until the contrary is shown.

Deed when presumed to have been duly acknowledged.

12. Nothing in this Act contained shall abridge, extend, or affect the powers of alienation or disposition which any married woman might have exercised over any property or rights otherwise than by levying a fine or suffering a recovery, or by joining in one of such assurances before the passing of this Act.

Saving of married women's power of alienation.

13. In any deed or will executed after this Act comes into operation, and disposing of immoveable property situate in the territories‡ under the Government of India, wherein contingent estates are limited without the appointment of any trustees to preserve such contingent estates, the same shall be, to all intents and purposes, as effectually protected by the law as if such trustees had been duly appointed.

Contingent estates without trustees to preserve, to be protected.

14. Any estate or interest in immoveable property, situate within the said territories, whether in possession, remainder, or reversion, may, in addition to any other mode of conveyance or release which is now valid, be conveyed, passed, or released by a simple deed, whether such deed operate under the Statute of Uses or not.§

Estate may be conveyed, &c., by simple deed.

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* See 3 & 4 Wm. IV., c. 74, s. 80.

† See 3 & 4 Wm. IV., c. 74, s. 84.

‡ See Act XII. of 1876.

§ See 8 & 9 Vic., c. 106, s. 2.

Act X. of 1855.

No conveyance to operate tortiously.

15. No conveyance of any kind shall operate to destroy, impair, or affect, any estate or interest which the conveying party has no right to destroy, impair, or affect, or beyond the extent to which he may impair or affect the same.*

Words of limitation not necessary in a deed, to give estate by inheritance.

16. It shall not be necessary in any deed relating to immoveable property situate within the said territories, to be executed after the passing of this Act, to add words of limitation to heirs, when the intention is to give the absolute interest to a person and his heirs general; but a gift, grant, or other conveyance of immoveable property to, or in favour of, any person, shall be taken to give him the entire and absolute interest in the nature of an estate in fee simple, unless such construction is rendered inadmissible by the other contents of the deed; and when, in any deed or will executed after the passing of this Act, any property is given to a person for life or for other freehold interest, and afterwards, in the same deed or will, is limited to his heirs or heir special, the estates shall not unite, but the limitation to the heirs shall be a limitation of an estate to be taken by the heirs by purchase.

Estate limited to heirs shall not unite with prior life estate.

Bonâ-fide purchaser not required to see to application of trust-money.

17. When any property is sold, the proceeds of which are subject to any trust, the *bonâ-fide* purchaser of the property shall not in any case be bound to see to the application of the purchase-money to the purposes of the trust.

Act to apply only to cases governed by English law.

18. Nothing in this Act contained shall extend to any case to which the English law is not applicable.

ACT X. OF 1855.

RECEIVED THE G.-G.'S ASSENT ON THE 21ST MARCH 1855.

An Act to amend the law relating to the attendance and examination of witnesses in the Civil Courts of the East India Company in the Presidencies of Fort St. George and Bombay.†

Recusant witnesses liable for damages in civil suit.

10.‡ Any person, whether a party to the suit or not, to whom a summons to attend and give evidence or produce a document shall be personally delivered, and who shall, without lawful excuse, neglect or refuse to obey such summons, or who shall be proved to have absconded, or kept out of the way to avoid being served with such summons, and any person who, being in Court, and upon being required by the Court to give evidence or produce a document in his possession, shall, without lawful excuse, refuse to give evidence or sign his deposition, or to produce a document in his possession, shall, in addition to any pro-

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* See 8 & 9 Vic., c. 106, s. 4.

† Here the words, "and to amend the provisions of section 40, Act XIX. of 1853," repealed by Act XII. of 1891, Sch. I., have been omitted.

‡ The whole Act, except ss. 9 and 10, was repealed by Act X. of 1861; and s. 9 was repealed by Act XII. of 1873. S. 10 has been declared to be in force in the whole of the Madras and Bombay Presidencies, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 4.

ceedings to which he would otherwise be subject, be liable to the party at whose request the summons shall have been issued, or at whose instance he shall be required to give evidence or produce the document, for all damages which he may sustain in consequence of such neglect or refusal, or of such absconding or keeping out of the way as aforesaid, to be recovered in a civil action. Act XI. of 1855.

ACT XI. OF 1855.*

RECEIVED THE G.-G.'S ASSENT ON THE 27TH MARCH 1855.

An Act relating to mesne profits and to improvements made by holders under defective titles in cases to which the English Law is applicable.

WHEREAS it is expedient, in cases to which the English law is applicable, to limit the liability for mesne profits, and to secure to *boná-fide* holders under defective titles the value of improvements made by them; It is enacted as follows :— Preamble.

1. No person shall be chargeable with any rents or profits of any immoveable property which he has *boná fide* paid over to any person of whom he *boná fide* held the same, notwithstanding it may afterwards appear that the person to whom such payment was made had no right to receive such rents or profits. No person chargeable with rent *boná fide* paid to holder under defective title.

2. If any person shall erect any building or make any improvement upon any lands held by him *boná fide* in the belief that he had an estate in fee simple, or other absolute estate, and such person, his heirs or assigns, or his or their under-tenants, be evicted from such lands by any person having a better title, the person who erected the building Value of improvements made by *boná-fide* holders under defective titles secured to them.

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*Act XI. of 1855 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

Sindh	See *Gazette of India*	Dec. 4, 1880, Pt. I., p. 672.
West Jalpaiguri	Ditto	Mar. 5, 1881, Pt. I., p. 74.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	Oct. 22, 1881, Pt. I., p. 504.
The Jhánsí Division	Ditto	Aug. 31, 1878, Pt. I., p. 56.
The scheduled portion of the Mirzápur District	Ditto	May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	May 31, 1879, Pt. I., p. 382.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán	Ditto	Jan. 30, 1886, Pt. I., p. 48.
The Scheduled Districts of the Central Provinces . . .	Ditto	Dec. 13, 1879, Pt. I., p. 771.
The District of Silhat . . .	Ditto	Oct. 4, 1879, Pt. I., p. 631.

It has been extended, under the same Act, to the Scheduled Districts of Kumáon and Garhwál.—See *Gazette of India*, Nov. 4, 1876, Pt. I., p. 606.

It has been declared, under the same Act, not to be in force in the Scheduled District of Lahaul.—See *Gazette of India*, May 1, 1886, Part I., p. 301.

Act XII. of 1855.

or made the improvement, his heirs or assigns, shall be entitled either to have the value of the building or improvement so erected or made during such holding and in such belief, estimated and paid or secured to him or them, or, at the option of the person causing the eviction, to purchase the interest of such person in the lands at the value thereof, irrespective of the value of such building or improvement:

Amount how fixed.

Provided that the amount to be paid or secured in respect of such building or improvement shall be the estimated value of the same at the time of such eviction.

Act to apply only to cases governed by English law.

3. Nothing in this Act contained shall extend to any case to which the English law is not applicable.

ACT XII. OF 1855.*

RECEIVED THE G.-G.'S ASSENT ON THE 27TH MARCH 1855.

An Act to enable Executors, Administrators, or Representatives to sue and be sued for certain wrongs.

Preamble.

WHEREAS it is expedient to enable executors, administrators, or representatives in certain cases to sue and be sued in respect of certain wrongs which, according to the present law, do not survive to or against such executors, administrators, or representatives; It is enacted as follows:—

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* See 3 & 4 Wm. IV., c. 42, s. 2.

Act XII. of 1855 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh	See *Gazette of India*	Dec. 4, 1880, Pt. I., p. 672.
West Jalpaiguri	Ditto	Mar. 5, 1881, Pt. I., p. 74.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	Oct. 22, 1881, Pt. I., p. 504.
The Jhánsí Division	Ditto	Aug. 31, 1878, Pt. I., p. 546.
The scheduled portion of the Mirzápur District	Ditto	May 31, 1879, Pt. I., p. 283.
Jaunsar Báwar	Ditto	May 31, 1879, Pt. I., p. 382.
The Districts of Hazára, Peshá-war, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán	Ditto	Jan. 30, 1886, Pt. I., p. 48.
The District of Lahaul	Ditto	May 1, 1886, Pt. I., p. 301.
The Scheduled Districts of the Central Provinces	Ditto	Dec. 13, 1879, Pt. I., p. 771.
The District of Silhat	Ditto	Oct. 4, 1879, Pt. I., p. 631.

It has been extended, under the same Act, to the following Scheduled Districts:—

Kumáon and Garhwál	See *Gazette of India*	Nov. 4, 1876, Pt. I., p. 606.
The North-Western Provinces Tarái	Ditto	Sep. 23, 1876, Pt. I., p. 505.

1. An action may be maintained by the executors, administrators, or representatives of any person deceased, for any wrong committed in the lifetime of such person, which has occasioned pecuniary loss to his estate, for which wrong an action might have been maintained by such persons, so as such wrong shall have been committed within one year before his death; and the damages, when recovered, shall be part of the personal estate of such person:

Executors may sue and be sued in certain cases for wrongs committed in lifetime of deceased.

and further, an action may be maintained against the executors or administrators, or heirs or representatives of any person deceased for any wrong committed by him in his lifetime for which he would have been subject to an action, so as such wrong shall have been committed within one year before such person's death; and the damages to be recovered in such action shall, if recovered against an executor or administrator bound to administer according to the English law, be payable in like order of administration as the simple contract debts of such person.

2. No action commenced under the provisions of this Act shall abate by reason of the death of either party, but the same may be continued by or against the executors, administrators, or representatives of the party deceased. Provided that, in any case in which any such action shall be continued against the executors, administrators, or representatives of a deceased party, such executors, administrators, or representatives may set up a want of assets as a defence to the action, either wholly or in part, in the same manner as if the action had been originally commenced against them.

Death of either party not to abate suit.

Proviso.

Act XIII. of 1855.

ACT XIII. OF 1855.*

RECEIVED THE G.-G.'S ASSENT ON THE 27TH MARCH 1855.

An Act to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong.

Preamble.

WHEREAS no action or suit is now maintainable in any Court against a person who, by his wrongful act, neglect, or default, may have caused the death of another person, and it is oftentimes right and expedient that the wrong-doer in such case should be answerable in damages for the injury so caused by him; It is enacted as follows:—

Suit for compensation to the family of a person for loss occasioned to it by his death by actionable wrong.

1. Whenever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued, shall be liable to an action or suit for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony or other crime.

And it is enacted further, that every such action or suit shall be for the benefit of the wife, husband, parent, and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator, or representative of the person deceased;

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* Act XIII. of 1855 has been copied from 9 & 10 Vic., c. 93 (Lord Campbell's Act).

It has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh	See *Gazette of India*	Dec. 4, 1880, Pt. I., p. 672.
West Jalpaiguri	Ditto	Mar. 5, 1881, Pt. I., p. 74.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	Oct. 22, 1881, Pt. I., p. 504.
The Jhánsí Division	Ditto	Aug. 31, 1878, Pt. I., p. 546.
The scheduled portion of the Mirzápur District	Ditto	May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar ...	Ditto	May 31, 1879, Pt. I., p. 382.
The Scheduled Districts of the Panjáb	Ditto	Oct. 15, 1881, Pt. I., p. 483.
The Scheduled Districts of the Central Provinces	Ditto	Dec. 13, 1879, Pt. I., p. 771.
The District of Silhat	Ditto	Oct. 4, 1879, Pt. I., p. 631.

It has been extended, under the same Act, to the following Scheduled Districts:—

Kumáon and Garhwál	See *Gazette of India*	Nov. 6, 1876, Pt. I., p. 606.
The North-Western Provinces Tarái	Ditto	Sep. 23, 1876, Pt. I., p. 505.

and in every such action, the Court may give such damages* as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought, and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the beforementioned parties, or any of them, in such shares as the Court by its judgment or decree shall direct.

Not more than one suit to be brought.

2. Provided always that not more than one action or suit shall be brought for, and in respect of, the same subject-matter of complaint; provided that, in any such action or suit, the executor, administrator, or representative of the deceased may insert a claim for, and recover any pecuniary loss to, the estate of the deceased occasioned by such wrongful act, neglect, or default, which sum, when recovered, shall be deemed part of the assets of the estate of the deceased.

Claim for loss to estate may be added.

Plaintiff shall deliver particulars, &c.

3. The plaint in any such action or suit shall give a full particular of the person or persons for whom, or on whose behalf, such action or suit shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered.

Interpretation-clause.

4. The following words and expressions are intended to have the meanings hereby assigned to them respectively, so far as such meanings are not excluded by the context or by the nature of the subject-matter, that is to say, words denoting the singular number are to be understood to apply also to a plurality of persons or things, and words denoting the masculine gender are to be understood to apply also to persons of the feminine gender; and the word "person" shall apply to bodies politic and corporate; and the word "parent" shall include father and mother† and grandfather and grandmother; and the word "child" shall include son‡ and daughter, and grandson and granddaughter, and step-son and step-daughter.

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* As to the measure of damages under this Act, see *Vinayak Raghunath* v. *G. I. P. Ry. Co.*, 7 Bom., O. C. J., 113: *Ratanbai* v. *G. I. P. Ry.*, ib. 120: S. C. on appeal, 8 ib. 130.

† Step-father and step-mother are designedly omitted.

‡ As to adopted sons, see 7 Bom., O. C. J., 113.

Act XXI. of 1855.

ACT XXI. OF 1855.*

RECEIVED THE G.-G.'S ASSENT ON THE 9TH AUGUST 1855.

An Act for making better provision for the education of male minors and the marriage of male and female minors subject to the superintendence of the Court of Wards in the Presidency of Fort St. George.

Preamble.

WHEREAS the existing laws are found insufficient to insure the proper education of male minors subject to the superintendence of the Court of Wards, and it is expedient to make further and better provision for the education of such persons and their younger brothers, and for the exercise of a control over the marriages of all minors under the superintendence of the Court of Wards; It is enacted as follows :—

General control of education of male minor wards vested in Collectors.

1. The general superintendence and control of the education of every male minor, whose property has been or shall be brought under the management of the Court of Wards, in and for any part of the Presidency of Fort St. George, by virtue of any Act or Regulation which now is or hereafter shall be in force, is hereby vested in the Collector of Revenue, acting under the said Court of Wards, in the zila or district wherein such minor's estate is situate; or, if such minor is possessed of immoveable property in different districts, in such one of the Collectors of Revenue of such districts as the said Court of Wards shall select.

Collectors may cause male minor wards to be educated at any school or college.

2. It shall be lawful for every Collector of Revenue, in whom the superintendence of the education of any minor is vested, by this Act, to direct that such minor shall reside, either with or without his guardian, at the sadr station of the district, or at any other place within the said Presidency, and shall attend for the purposes of education such school or college as to the said Collector may seem expedient, and to make such provision as may be necessary for the proper care and suitable maintenance of the said minor whilst attending such school or college.

Or, in certain cases, by private tutor.

3. If it shall appear to the Collector inexpedient to place any such minor at a school or college, he shall cause such minor to be educated by a private tutor, properly qualified, either at the family-residence of such minor, or at the sadr station, or elsewhere within the said Presidency, and in that case also the Collector shall have power to determine from time to time the place of residence of such minor, and to make such provision as may be necessary for his proper tuition and maintenance during the period of his education.

Charges incurred under Act to be paid out of profits of ward's estate.

4. All charges and expenses which may be incurred on account of any male minor ward under the provisions of this Act, for college or school-fees, or for other charges of tuition or education, or by reason of his residence in any place other than his own home, or otherwise, shall be defrayed from the profits of his estate, in the same manner as other expenses incurred under the authority or with the sanction of the Court of Wards.

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* Act XXI. of 1855 has been declared to apply to the whole of the Madras Presidency, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 4.

5. It shall be lawful for the Court of Wards, on the application of a Collector, to remove from office any guardian who shall neglect or refuse to obey, or shall evade compliance with, any orders passed, or directions given, by such Collector under the provisions of this Act, and to cause a new guardian to be appointed in his place, whether the person so removed shall have been first invested with the guardianship of the minor upon the nomination of a Collector acting under the Court of Wards, or by a testamentary appointment confirmed by the Court of Wards.

Court of Wards may remove guardians for disobedience to orders passed by Collector.

6. The guardian so removed shall, notwithstanding his removal, continue liable to account to the Collector for his receipts and disbursements during the period of his guardianship, and every guardian appointed in the place of a guardian so removed shall be chosen in the same way, and shall have the same rights and powers, and be subject to the same responsibilities, as persons originally appointed to be guardians of minors by a Collector of Revenue acting under the Court of Wards.

Liability of guardian removed. Powers and responsibilities of new guardian.

7. The right to the custody of the person of any male minor whose property is under the management of the Court of Wards is hereby vested in the person appointed with the sanction of the Court of Wards, either originally or upon the removal of a former guardian, to be the guardian of such minor, or, in the absence of any such person, the Collector of Revenue having the superintendence of the education of such minor under the provisions of this Act.

Right to custody of person of male minor.

8. Whenever a minor whose property is under the management of the Court of Wards has a younger brother or brothers entitled to maintenance at the charge of the estate, all the powers and provisions hereinbefore contained for promoting the education of such minor are hereby declared and made applicable to such younger brother or brothers.

Foregoing sections applied to younger brothers of wards.

9. Whoever knowingly aids or abets the marriage of any minor whose property is under the superintendence of the Court of Wards, or the marriage of a younger brother or sister of such minor, without the leave of the Collector of Revenue acting under the Court of Wards to such marriage first had and obtained, shall, on conviction before a Court of Session, upon the prosecution of such Collector, be liable to a fine not exceeding two thousand rupees, or to imprisonment not exceeding the term of six months, with or without hard labour.

Penalty for abetting marriage of ward without leave of Collector.

10. All orders and proceedings of a Collector under the provisions of this Act shall be subject to the revision of the Court of Wards, and every person aggrieved by any such order or proceeding may prefer an appeal therefrom to the Court of Wards.

Appeal from orders of Collector to lie to Court of Wards.

Act XXIII. of 1855.

ACT XXIII. OF 1855.*

RECEIVED THE G.-G.'S ASSENT ON THE 13TH AUGUST 1855.

An Act to amend the Law relating to the administration of the Estates of deceased persons charged with money by way of Mortgage.

Preamble.

WHEREAS it is expedient that the law under which the real and personal assets of deceased persons subject to the English law are administered, should be amended; It is enacted as follows:—

Heir or devisee of land not to claim payment of mortgage out of personalty.

1. If any person shall die seised of, or entitled to, any estate or interest in any land or other hereditaments within the territories in the possession of, and under the government of, the East India Company, which shall, at the time of his death, be charged with the payment of any sum or sums of money by way of mortgage, and such person shall not, by his will or deed or other document, have signified any contrary or other intention, the heir or devisee to whom such land or hereditaments shall descend or be devised, shall not be entitled to have the mortgage-debt discharged or satisfied out of the personal estate or any other real estate of such person, but the land or hereditaments so charged shall, as between the different persons claiming through or under the deceased person, be primarily liable to the payment of all mortgage-debts with which the same shall be charged, every part thereof, according to its value, bearing a proportionate part of the mortgage-debts charged on the whole thereof:

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* Act XXIII. of 1855 is based on 17 & 18 Vic., c. 113. It has been repealed, except as to descents or devises occurring or made before 1st January 1866, by Act VIII. of 1868.

Act XXIII. of 1855 has been declared, as regards such descents and devises, to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

The Act has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

West Jalpaiguri	See *Gazette of India*, Mar. 1, 1881, Pt. I., p. 74.	
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	. Oct. 22, 1881, Pt. I., p. 504.
The Jhánsí Division	Ditto	. Aug. 31, 1878, Pt. I., p. 546.
The scheduled portion of the Mirzápur District	Ditto	. May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	. May 31, 1879, Pt. I., p. 382.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán	Ditto	. Jan. 30, 1886, Pt. I., p. 48.
The District of Silhat. . . .	Ditto	. Oct. 4, 1879, Pt. I., p. 631.

It has been declared, under the same Act, not to be in force in the Scheduled District of Lahaul.—See *Gazette of India*, May 1, 1886, Pt. I., p. 301.

As to devises made on or after 1st January 1866, see the Indian Succession Act (X. of 1865), s. 154, *infra*.

Proviso as to right of mortgagee to satisfaction from personal assets.

Provided always that nothing herein contained shall affect or diminish any right of the mortgagee of such lands or hereditaments to obtain full payment or satisfaction of his mortgage-debt, either out of the personal estate of the person so dying as aforesaid or otherwise:

Proviso as to claims made prior to this Act.

Provided also that nothing herein contained shall affect the rights of any person claiming under, or by virtue of, any will, deed, or document already made, or to be made, before this Act shall have come into operation.

ACT XXIV. OF 1855.*

RECEIVED THE G.-G.'S ASSENT ON THE 13TH AUGUST 1855.

An Act to substitute Penal Servitude for the Punishment of Transportation in respect of European and American Convicts.†

Preamble.

WHEREAS, by reason of the difficulty of providing a place to which Europeans or Americans can, with safety to their health, be sent for the purpose of undergoing sentences of transportation or of imprisonment for long terms, it has become expedient to substitute other punishment for that of transportation;† It is enacted as follows:—

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* Act XXIV. of 1855 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh	See *Gazette of India*.	Dec. 4, 1880, Pt. I., p. 672.
Aden	Ditto	June 28, 1879, Pt. I., p. 434.
West Jalpaiguri and the Western Dvárs	Ditto	Mar. 5, 1881, Pt. I., p. 74.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	Oct. 22, 1881, Pt. I., p. 504.
The Jhánsí Division	Ditto	Aug. 31, 1878, Pt. I., p. 546.
The scheduled portion of the Mirzápur District	Ditto	May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	May 31, 1879, Pt. I., p. 382.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán	Ditto	Jan. 30, 1886, Pt. I., p. 48.
The Scheduled Districts of the Central Provinces	Ditto	Dec. 13, 1879, Pt. I., p. 771.
The District of Silhat	Ditto	Oct. 4, 1879, Pt. I., p. 631.

It has been declared, under the same Act, not to be in force in the Scheduled District of Lahaul.—See *Gazette of India*, May 1, 1886, Pt. I., p. 301.

† Here certain words, which were repealed by Act XII. of 1891, have been omitted.

Act XXIV. of 1855.

No European or American to be sentenced to transportation.

1.* No European or American shall be liable to be sentenced or ordered, by any Court within the territories under the Government of India, to be transported.

Terms of penal servitude instead of the present terms of transportation.

2. Any person who, but for the passing of this Act, would by any law now in force, or which may hereafter be in force in any part of the said territories, be liable to be sentenced or ordered, by any such Court, to be transported, shall, if a European or American, be liable to be sentenced or ordered to be kept in penal servitude for such term as hereinafter mentioned.

The terms of penal servitude to be awarded by any sentence or order instead of the term of transportation to which any such offender would, but for the passing of this Act, be liable, shall be as follows (that is to say):—

Instead of transportation for seven years, or for a term not exceeding seven years, penal servitude for the term of four years.

Instead of any term of transportation exceeding seven years, and not exceeding ten years, penal servitude for any term not less than four and not exceeding six years.

Instead of any term of transportation exceeding ten years, and not exceeding fifteen years, penal servitude for any term not less than six and not exceeding eight years.

Instead of any term of transportation exceeding fifteen years, penal servitude for any term not less than six and not exceeding ten years.

Instead of transportation for the term of life, penal servitude for the term of life.

And in every case where, at the discretion of the Court, one of any two or more of the terms of transportation hereinbefore mentioned might have been awarded, the Court shall have the like discretion to award one of the two or more terms of penal servitude hereinbefore mentioned in relation to such terms of transportation.

Discretion of Courts as to alternative punishments.

3. Provided always that nothing herein contained shall interfere with or affect the authority or discretion of any Court in respect of any punishment which such Court may now award or pass on any offender other than transportation; but where such other punishment may be awarded at the discretion of the Court instead of transportation or in addition thereto, the same may be awarded instead of, or (as the case may be) in addition to, the punishment substituted for transportation by this Act.

Effect of pardon granted upon condition of penal servitude.

4. If any offender sentenced by any Court within the said territories to the punishment of death shall have mercy extended to him, upon condition of his being kept in penal servitude for life, or for any term of years, all the provisions of this Act shall be applicable to such offender in the same manner as if he had been lawfully sentenced under this Act to the term of penal servitude specified in the condition.

5, 6, 7. [*Repealed by Act V. of 1871.*]

8. [*Repealed by Act XII. of 1867.*]

9, 10, 11, 12. [*Repealed by Act V. of 1871.*]

* In s. 1, certain words, which were repealed by Acts XVI. of 1874 and XII. of 1876, have been omitted.

13. Nothing in this Act is intended to alter or affect the provisions of the 12 and 13 Victoria, chapter 43,* or any Act of Parliament passed in the United Kingdom of Great Britain and Ireland since the 28th of August 1833, or which may hereafter be passed.

Act not to affect the provisions of certain English Statutes.

14. Any sentence or order upon any person describing him as a European or American shall be deemed, for the purposes of this Act, to be conclusive of the fact that such person is a European or American within the meaning of this Act.

Sentence when proof that a person is a European or an American.

15. The word "European," as used in this Act, shall be understood to include any person usually designated a European British subject. Words in the singular number or the masculine gender shall be understood to include several persons, as well as one person, and females as well as males, unless there be something in the context repugnant to such construction.

Interpretation-clause.

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* "An Act for punishing mutiny and desertion of officers and soldiers in the service of the East India Company, and for regulating in such service the payment of regimental debts and the distribution of effects of officers and soldiers dying in the service."—Repealed by 20 & 21 Vic., c. 66.

Act XXVIII. of 1855.

ACT XXVIII. OF 1855.*

RECEIVED THE G.-G.'S ASSENT ON THE 19TH SEPTEMBER 1855.

An Act for the repeal of the Usury Laws.†

Preamble.

WHEREAS it is expedient to repeal the laws now in force relating to Usury; ‡ It is enacted as follows:—

1. [*Repealed by Act XIV. of 1870.*]

Rate of interest to be decreed by Courts.

2. In any suit in which interest is recoverable, the amount shall be adjudged or decreed by the Court at the rate (if any) agreed upon by the parties; § and if no rate shall have been agreed upon, at such rate as the Court shall deem reasonable.

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* Act XXVIII. of 1855 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

Sindh	See *Gazette of India*.	Dec. 4, 1880, Pt. I., p. 672.
West Jalpaiguri, the Western Dvárs, the Western Hills of Dárjiling, the Dárjiling Tarái, and the Damson Sub-division of the Dárjiling District .	Ditto	Mar. 5, 1881, Pt. I., p. 74.
The District of Hazáribágh .	Ditto	Oct. 22, 1881, Pt. I., p. 507.
Ditto Lohárdaga .	Ditto	Oct. 22, 1881, Pt. I., p. 508.
Ditto Mánbhum . .	Ditto	Oct. 22, 1881, Pt. I., p. 509.
Pargana Dhálbhum in the District of Singbhum	Ditto	Oct. 22, 1881, Pt. I., p. 510.
The Jhánsí Division . . .	Ditto	Aug. 31, 1878, Pt. I., p. 546.
The scheduled portion of the Mirzápur District . . .	Ditto	May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	May 31, 1879, Pt. I., p. 382.
The Districts of Hazára, Peshávar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán	Ditto	Jan. 30, 1886, Pt. I., p. 48.
The District of Lahaul . . .	Ditto	May 1, 1886, Pt. I., p. 301.
The Scheduled Districts of the Central Provinces	Ditto	Dec. 13, 1879, Pt. I., p. 771.
The District of Silhat . . .	Ditto	Oct. 4, 1879, Pt. I., p. 631.
The Districts of Kámrup, Naugong, Darrang, Sibságár, Lakhimpur, Goálpára (excluding the Eastern Dvárs), and Káchár (excluding the North Káchár Hills)	Ditto	Aug. 24, 1878, Pt. I., p. 533.

It has been extended, under the same Act, to the following Scheduled Districts :—

Kumáon and Garhwál . . .	Ditto	Nov. 4, 1876, Pt. I., p. 606.
The North-Western Provinces Tarái	Ditto	Sep. 23, 1876, Pt. I., p. 505.

† See 2 Mad. 453 : 10 Bom. 382.

‡ This Act does not affect the Hindú or Muhammadan law as to interest.—See 3 Beng. O. C. J. 130 (*contra* 5 Beng. 500) : 3 Bom. A. C. J. 23 : 7 Bom. O. C. J. 19 : 10 Bom. 385.

§ See 4 Bom. A. C. J. 202.

Rate of interest upon a judgment or decree.

3. Whenever a Court shall direct that a judgment or decree shall bear interest, or shall award interest upon a judgment or decree, it may order the interest to be calculated at the rate allowed in the judgment or decree upon the principal sum adjudged, or at such other rate as the Court shall think fit.

Contract for usufruct of property, in lieu of interest.

4. A mortgage or other contract for the loan of money, by which it is agreed that the use or usufruct of any property shall be allowed in lieu of interest, shall be binding upon the parties.

Amount of interest to be deposited in certain cases of conditional sales under Bengal Regulations.

5. Whenever, under the Regulations of the Bengal Code,* a deposit may be made of the principal sum and interest due upon any mortgage or conditional sale of land hereafter to be entered into, the amount of interest to be deposited shall be at the rate stipulated in the contract, or, if no rate has been stipulated, and interest be payable under the terms of the contract, at the rate of twelve per centum per annum. Provided that, in the latter case, the amount deposited shall be subject to the decision of the Court as to the rate at which interest shall be calculated.

Proviso.

Rate of interest on future adjustments of accounts.

6. In any case in which an adjustment of accounts may become necessary between the lender and the borrower of money upon any mortgage, conditional sale of landed property, or other contract whatsoever, which may be entered into after the passing of this Act, interest shall be calculated at the rate stipulated therein; or, if no rate of interest shall have been stipulated, and interest be payable under the terms of the contract, at such rate as the Court shall deem reasonable.

ACT XXXII. OF 1855.† Beng. Code

RECEIVED THE G.-G.'S ASSENT ON THE 30TH NOVEMBER 1855.

An Act relating to Embankments.

Preamble.

WHEREAS the Regulations now in force for the maintenance of embankments in the territories under the government of the Lieutenant-Governor of Bengal have been found ineffectual for the intended purposes thereof; and whereas it is desirable that provision should be made for the better supervision and protection of the same; It is enacted as follows:—

1. [*Repealed by Act XIV. of 1870.*]

"Embankment" defined.

2 The word "embankment" in this Act means an embankment for the purpose of excluding or retaining water; and every embankment which is now kept up, or may hereafter be kept up, by the officers of Government, at the expense either of Government or of any private person, is a public embankment within the meaning hereof.

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* See Ben. Reg. I. of 1798, s. 2.

† Act XXXII. of 1855 has been repealed, except so far as relates to Orissa and the Sundarbans, by Ben. Act VI. of 1873.

Act XXXII. of 1855.

Superintendent of Embankments.

3. The superintendence of the public embankments shall be entrusted, subject to the general orders of Government, to an officer who shall be called the Superintendent of Embankments.

Charge of embankment connecting public embankments, &c.

4. *Clause 1.*—The Superintendent of Embankments may cause any embankment which connects public embankments, or forms by junction with them part of a line of embankments, or is necessary for the protection of the neighbouring country, to be taken charge of and kept up by the officers of Government.

Removing private embankment endangering public one.

Clause 2.—He may also cause any private embankment which endangers the stability of a public embankment, or obstructs the beneficial drainage of the country, to be removed.

Changing line of embankment or making new one.

Clause 3.—He may also, when necessary, change the line of any public embankment, or make a new embankment.

Enlarging embankment, &c.

Clause 4.—He may also enlarge any public embankment, and do all acts necessary and proper for the maintenance thereof.

Notice to Collector before taking charge, &c.

5. *Clause 1.*—Before the Superintendent shall cause any of the works mentioned in the first three clauses of the next preceding section to be executed, he shall give notice in writing to the Collector of the district of his intention so to do.

Issue of proclamation.

Upon the receipt of such notice, the Collector shall cause a proclamation to be issued, incorporating the substance of the notice, and calling upon all persons interested, who may be desirous of showing cause against the execution of such works, to appear before him on a certain day to be named therein.

Publication of proclamation.

Clause 2.—The proclamation shall be published by affixing the same in the kachahrí of the Collector, the mál kachahrí (if any) of the estate on which the works are intended to be executed, and on some conspicuous spot in the neighbourhood thereof.

The proclamation shall be published not less than fifteen days before the day appointed for hearing the parties interested.

Procedure on appearance of parties.

Clause 3.—The Collector shall hear the objections of any parties who may appear, and, after recording any evidence which they may adduce, shall communicate the objections that may be made, together with his opinion thereon, to the Superintendent of Embankments.

If the Superintendent agree in opinion with the Collector, he shall pass an order accordingly.

If he differ from the Collector, the case shall be referred to the Commissioner of Revenue, who shall pass such orders thereon as he may deem fit.

Appeal from orders of Superintendent and Commissioner.

Clause 4.—Every such order passed by the Superintendent shall be appealable to the Commissioner of Revenue, and every order of the Commissioner shall be appealable to the Board of Revenue; but no appeal shall lie against any order passed under this section, unless the same be presented within one month from the date of the order.

Clause 5.—Subject to the right of appeal above-mentioned and to the orders and control of Government, every order passed under this section shall be final, and shall not be open to revision by any Civil Court, and shall be conclusive as to the necessity of any works ordered to be executed.

Orders not open to revision by Civil Court.

6. Whenever the Superintendent of Embankments shall hereafter cause an embankment which any person is bound to keep up to be taken charge of by the officers of Government, the expense of keeping up such embankment shall be charged to such person:

Charging cost of maintaining private embankments in charge of Government officers.

Provided that the amount so charged shall not exceed the reasonable expense of keeping up an embankment of the size and description which such person was bound to keep up, notwithstanding the embankment shall have been enlarged or improved by the officers of Government.

Proviso.

7. *Clause 1.*—When the Superintendent of Embankments shall enlarge or change the line of any embankment, or make a new embankment, or cause an embankment to be removed, any person sustaining damages thereby, who, but for the passing of this Act, would be entitled to compensation, may prefer his claim for such compensation to the Collector of the district, at any time within twelve months after the execution of the work by which he is endamaged, and the Collector thereupon shall report the case for the orders of the superior Revenue-authorities.*

Compensation for damages.

If the claim be rejected, the claimant shall not be deprived, by reason of this Act, of any right which he might otherwise have had to recover such compensation by a civil action; but such action shall not lie, unless the claimant shall have first preferred his claim to the Collector within the period above-mentioned, nor unless the suit be brought within a period of one year after notice to the claimant of its rejection.

If the claim for compensation be admitted by the Revenue-authorities, and the amount of compensation cannot be agreed upon, the same shall be settled by arbitration, in the manner hereinafter provided, and in no other manner, unless by the consent of the claimant and of the superior Revenue-authorities.

Clause 2.—Unless the Collector and the claimant concur in the appointment of a single arbitrator, the Collector on the part of Government, and the claimant, shall each appoint an arbitrator.

Appointment of arbitrators.

The appointment shall be in writing, and neither of the said parties shall have power to revoke the same without the consent of the other.

Clause 3.—If there be several claimants for compensation in respect to the same injury, and they cannot agree in the appointment of an arbitrator on their behalf, in that case each of them may nominate one person; and the Collector shall choose by lot out of the persons so nominated by the parties, or any of them, a person to act as arbitrator on behalf of the claimants.

Arbitrator how chosen when there are several claimants for compensation.

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* As to payment of compensation where it is payable by persons whose lands are benefited, see Ben. Act VII. of 1866, s. 1.

Act XXXII. of 1855.

If only one person shall be so nominated, he shall be the arbitrator on behalf of the claimants.

Clause 4.—When more than a single arbitrator shall be appointed, the arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing a third person to act with them as arbitrator, and in case the arbitrators shall neglect to appoint such third arbitrator for a period of seven days after having been required so to do, the Collector may appoint such third arbitrator.

Appointment of third arbitrator.

If the arbitrators differ in opinion, or if one of them, having received due notice of a meeting of arbitrators, neglect to attend, any two arbitrators may make an award.

Clause 5.—If any person, on being appointed an arbitrator, shall refuse to act, or, after accepting the appointment, shall die, or become incapable of acting, another person shall be appointed in his stead, in the same manner in which the first person was appointed.

Appointment in place of arbitrator not acting.

Clause 6.—After the arbitrators have accepted the appointment, the Collector shall be competent to exercise towards them such powers and authority, for securing their attendance, and the due completion of their award, as the said Collector may legally exercise towards witnesses summoned before him when acting judicially for the purposes of compelling them to attend and give evidence.

Collector empowered to enforce attendance of arbitrators.

Clause 7.—If no award be made within a period to be fixed for that purpose by the Collector, he may order that the matter shall be referred to another arbitrator or arbitrators, to be chosen in the same manner and subject to the same rules as the first.

In default of award within specified period, fresh arbitrators may be chosen.

Clause 8.—The Collector shall furnish to the arbitrators, or, so far as may be in his power, procure for them, any information which his records or those of any public department may afford connected with the subject of enquiry.

Collector to furnish information to arbitrators,

He shall, on the application of the arbitrators, summon any witnesses whom the arbitrators may call for, and whom the parties may not be able to produce before them without such process, and require the persons so summoned to bring and produce before them all such books, papers, deeds, writings, maps, and plans as they shall require.

and to enforce attendance and examination of witnesses, &c.

He shall also cause the proper affirmation to be made and signed by any witness whom the arbitrators may desire to examine upon affirmation to be made and signed before them.

Any witness who shall refuse or omit to appear when duly summoned by the Collector, or who shall appear, but shall refuse to make such affirmation, or who shall refuse to give evidence, shall be liable to the same punishment which would be incurred under the law by a witness refusing to appear or give evidence before the Collector when acting judicially.

Penalty on witness not appearing.

Any person giving intentionally and deliberately a false deposition under an affirmation, in any case referred to arbitration as above, shall be held to be guilty of perjury, and shall be liable to the penalties prescribed for that offence by law.

Penalty for false deposition.

Clause 9.—On the close of the enquiry, the arbitrators shall deliver a full and complete award, which shall specify the amount of compensation, and the party or parties entitled thereto.

Award of arbitrators.

The proceedings of the arbitration shall be deposited in the Collector's office; and every party interested therein shall be entitled to a copy of the award on plain paper under the seal and signature of the Collector, which copy shall be *primâ-facie* evidence thereof.

Clause 10.—If the right to the compensation awarded shall in any case be doubtful, or if there exist any grounds which, in the judgment of the arbitrators or of the Collector, render it improper to make immediate payment thereof to any of the claimants, the amount shall be invested in Government securities, and held in deposit until one of the claimants shall obtain an order of Court for the payment thereof.

When payment of compensation may be deferred.

Clause 11.—No award passed under this section shall be liable to be reversed or altered, except by the decision of a Civil Court, on the ground of corruption or misconduct of the arbitrators; and no suit to set aside such an award shall be entertained, unless it be instituted within three months from the date of the award.

Reversal or alteration of award.

In case the award shall be so reversed, the matter shall be referred to another arbitrator, or other arbitrators, to be appointed in the same manner as the first.

Clause 12.—All suits and proceedings instituted against Government in any case in which compensation has been awarded, except suits instituted for the reversal of awards as aforesaid, shall be dismissed with costs.

Dismissal of suits against Government.

But nothing herein contained shall affect the right of any party to recover the amount awarded from any person who may have received the same without any just title thereto.

Proviso.

Clause 13.—In fixing the amount of compensation to which any person may be entitled by reason of any of the acts mentioned in clause 1 of this section, the Court or arbitrators, as the case may be, shall take into consideration whether any party to the suit or arbitration has derived or will derive benefit from the act in respect of which the compensation is claimed, and shall set-off the estimated value of such benefit, if any, against the compensation which would otherwise be decreed or awarded to that party.

Estimated value of benefit to be set-off against compensation awarded.

Clause 14.—The provisions of this section shall not be held applicable to cases in which the compensation to be made has reference only to huts, trees, or crops which it may be necessary to remove or destroy in enlarging or changing the line of a public embankment.

Exception of cases of compensation in respect to huts, trees, or crops.

In all such cases the officer in charge of the public embankments of the district shall report to the Collector, and the Collector shall thereupon proceed to value and make compensation for such huts, trees, and crops, in the manner prescribed in section 12 of this Act.

Act XXXII. of 1855.

8. *Clause 1.*—If any landholder, farmer, or cultivator be desirous of having a sluice made in any public embankment for the purpose of drainage or irrigation, he shall make an application in writing to the Collector of the district in which such embankment is situate.*

Application by landholder to have sluice made in public embankment.

The application shall contain such particulars of the land to be drained or irrigated as may enable the officers of Government to judge of the advantage which may be derived from the work, and shall declare, as regards an embankment maintained at the expense of the State, whether the applicant is willing to bear such part, not exceeding half of the cost thereof, as may be determined by Government; and, as regards any other public embankment, whether the applicant is willing to defray the whole or such part of the cost incident to, and attendant on, the proposed work, as may be determined as aforesaid.

Clause 2.—The Collector shall transmit such application to the officer in charge of the embankments of the district, who shall report his opinion thereon to the Superintendent of Embankments, and, if he be of opinion that compliance with the application is unobjectionable, shall annex to his report a plan of the proposed work and an estimate of the expense of its construction.

Officer in immediate charge to report on proposed work.

The Superintendent of Embankments shall pass such order thereon as he shall think fit, which order shall be final.

Clause 3.—If the construction of the proposed sluice receive the approval of the Superintendent of Embankments, the Collector shall require the applicant to enter into a written agreement to defray the whole or half of the expense, or such portion thereof as may be determined under the provisions of clause 1 of this section, as the case may be; and upon such agreement being executed, shall issue a certificate to the officer in charge of the public embankments of the district to construct the sluice.

Upon applicant engaging to defray cost, Collector may issue certificate.

9. Sluices constructed in any public embankment shall be opened only by, or with the permission of, the officer in the immediate charge of the embankment under such orders, either general or special, as he may receive from the officer in charge of the public embankments of the district or from the Superintendent of Embankments.

Opening of sluices.

10. Whenever any person is desirous that a temporary watercourse should be made through, or that a temporary roadway should be made over, any public embankment, or that a temporary dam should be constructed in any embanked river, he shall apply to the nearest officer of the Embankment Department, who shall communicate the application to the officer in charge of the public embankments of the district, and that officer shall pass such orders thereon as he shall think fit, subject to the control of the Superintendent of Embankments.

Officer in immediate charge may authorize temporary watercourse, &c., to be made.

If the proposed work is to be executed by an officer of Government, the applicant, before the commencement of the work, shall enter into a written agreement to defray the expenses of, and incident to, making such roadway, or of making and closing or removing such watercourse or dam.

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* As to apportionment of cost of sluice where lands of several owners are benefited, see Ben. Act VII. of 1866, s. 6.

In any case of emergency the officer in immediate charge of an embankment, subject to such general instructions as he may receive from the officer in charge of the embankments of the district, or from the Superintendent of Embankments, may cause a temporary watercourse to be made through such embankment. Act XXXII. of 1855.

11. *Clause 1.*—Specifications of the work and estimates of the expense which may be required for the maintenance or improvement of embankments kept up at the expense of zamíndárs or others shall be prepared as soon after the rains in each year as may be practicable.

Annual specifications and estimates for maintaining or improving embankments kept up at expense of zamíndárs.

Copies of the specifications and estimates shall be transmitted to the office of the Collector, and may be examined by any person interested in the embankments.

Notice of the receipt of the specifications and estimates shall be posted up in the Collector's office; and should any objection be preferred by any such person within a period of one month from the date of such notice, the Collector shall communicate the objection, with his own opinion thereupon, to the Superintendent of Embankments, who shall pass such orders as may appear to him reasonable and proper.

Provided, however, that if the objection refer to the construction of sluices or other new works, any person dissatisfied with the order of the Superintendent may appeal to the Commissioner, who, subject to the orders of the Board of Revenue and of Government, may disallow the construction of the work.

Clause 2.—The accounts of the actual expense incurred in maintaining or improving embankments kept up at the expense of zamíndárs or others, and in constructing and repairing sluices, and making temporary watercourses or roadways through or over any public embankment, or executing any other work the expense of which may be chargeable to individuals, shall be prepared as soon as possible after the completion of such works, and shall, as soon as such accounts shall have received the sanction of the Superintendent of Embankments, be forwarded to the office of the Collector, and may be there examined by any person interested.

Accounts to be forwarded to Collector, who may recover as arrears of Government revenue.

Notice of the receipt of the accounts shall be posted up in the Collector's office; and if, within one month from the date of such notice, any interested person shall object to the accounts, on the ground either that the work charged for has not been performed, or that the whole sum charged has not been expended, or that the rates of charge are higher than the estimate, the Collector shall enquire into such objection, and, if the objection appear to be well founded, shall communicate the same, with his opinion thereon, to the Superintendent of Embankments.

If the Superintendent concur with the Collector, he shall pass orders accordingly; if he differ, the case shall be reported to the Commissioner, whose decision shall be final.

When the objection shall have been finally disposed of, or, if no objection be preferred, when a full month shall have elapsed from the date of notice, the Collector shall proceed to levy the amount from the parties liable to pay the same, by the process which is or may be in force for the recovery of arrears of Government revenue.

Act XXXII. of 1855.

12. *Clause 1.*—Whenever the Superintendent of Embankments shall be of opinion that the removal of any houses, huts, or other buildings, situated between a public embankment and the river, is necessary, he shall make a report to that effect, accompanied by a detailed statement of the houses, huts, or other buildings to be removed, to the Collector of the district in whose jurisdiction the land on which such houses, huts, or other buildings stand, is situated.

Superintendent to report to Collector as to removal of buildings, &c.

Clause 2.—When such report is received, the Collector shall cause a notice, containing a general description of the houses, huts, or other buildings proposed to be removed, to be affixed in some conspicuous place upon the land, and to be published by proclamation in the nearest bázár, calling on all persons claiming a right in such houses, huts, or other buildings to appear in person or by authorized agent at a place to be specified in the notice, on or before a given date, not being less than fifteen days from the date of such proclamation, in order to make known the amount and particulars of their claim to compensation to a jury to be appointed in the following manner.

Collector to give notice to claimants.

Clause 3.—The Collector shall direct a Deputy Collector or a principal officer of his establishment to proceed to the spot, and there to select three respectable inhabitants of the neighbourhood, to form with himself a jury for determining the value of the houses, huts, or buildings, and, if any dispute should arise, the rights of the claimants.

Selection of jury.

Clause 4.—The jury shall assess the value of each house, hut, or building separately.

Proceedings of jury.

If in any case they differ, the value shall be assessed according to the opinion of the majority ; and if they be equally divided, the Deputy Collector or other officer as aforesaid shall have a casting vote.

Clause 5.—Having completed their proceedings, the jury shall make their award, which shall contain a schedule of the houses, huts, and buildings, the amount of value assessed on each, and the name of the person or persons entitled to receive the same.

Award of jury.

The award shall be final and conclusive, and not open to question in the Civil Court:

Provided always that any person who was not present at the enquiry, or whose claim may have been set aside by the jury, may institute a suit for the value of the property claimed by him against the person to whom payment may have be en made under the award.

13. The Collector, on receiving the award, shall cause a notice to be affixed in some conspicuous place upon the land, with a citation calling on the parties to appear before him or the Deputy Collector or other officer aforesaid, in person or by authorized agent, at a certain time and place, and receive the amount so awarded, and warning them to remove their houses, huts, or other buildings within thirty days from the date of such notice.

After award, Collector to give notice of payment and to remove buildings, &c., in thirty days.

14. If, on the expiration of the above-stated period, the houses, huts, or other buildings shall have not been previously removed, the Collector shall cause the same to be removed or levelled ; and if any expense be incur-

When Collector may remove buildings, &c., at cost of owners.

red in removing or levelling the same, the Collector may sell the materials at public auction in order to defray the charge, delivering any surplus that may remain to the owner.

Penalty for obstructing officer in discharge of duty.

15. Whoever wilfully obstructs any duly authorized person in removing or levelling any embankment, house, hut, or other building, shall be liable to be imprisoned for any time not exceeding six months, with or without labour, at the discretion of the Magistrate, or to fine not exceeding two hundred rupees, commutable, if not paid, to a period of imprisonment not exceeding six months, or to both.

Penalty for wilful damage to embankment by cutting, &c.

16. Whoever wilfully, and without due authority, cuts through, or attempts to cut through, any embankment, whether public or private, or destroys or attempts to destroy any such embankment, or opens any sluice or watercourse in any such embankment, shall be liable, on conviction before a Magistrate, to be imprisoned for a term not exceeding one year, with or without labour, or to a fine not exceeding two hundred rupees, commutable, if not paid, to a period of imprisonment not exceeding one year, or to both; or, if the Magistrate be of opinion that such punishment is insufficient for the offence, he may commit the offender to the Sessions Court, in which case he shall be liable, on conviction, to imprisonment for a period not exceeding seven years, with or without labour, or to fine, or to both.

Penalty for other wilful damage.

17. Whoever damages any public embankment by making any dam or other obstruction for the purpose of diverting or opposing the current of an embanked river without the permission of the officer in immediate charge of the embankments, or by refusing or neglecting to remove any such dam or obstruction at the proper season, or by cutting or otherwise altering the banks of any embanked river, or by removing the earth from such embankment, or by grazing or tethering any cattle or other animals on any such embankment, or by driving stakes into, or cutting or rooting out grass growing on, such embankment, or by any other wilful act destroys or diminishes the efficiency of such embankment, shall be liable, on conviction before a Magistrate, to simple imprisonment for a term not exceeding six months, or to a fine not exceeding two hundred rupees, or to both.

Jurisdiction of Deputy or Assistant Magistrate.

18. Any Deputy or Assistant Magistrate may take cognizance of offences under this Act, and may punish offenders to the extent of the power conferred upon him by the Regulations of the Bengal Code, and by the Acts of the Governor-General of India in Council.*

19. [*Repealed by Act XVI. of 1874.*]

Right of appeal.

20. All sentences and orders passed by a Magistrate, Deputy Magistrate, or Assistant under this Act, shall be appealable, subject to the general provisions which regulate appeals.

Interpretation.

21. In the construction of this Act, words importing the singular number only shall include the plural, and words importing the plural number only shall include the singular; words importing the masculine gender only shall include females; the word "Collector" shall mean any Collector, Deputy Collector, or other Revenue-officer in independent charge of any district or portion of a district.

*The last seven words of s. 18, repealed by Act XVI. of 1874, s. 1, have been omitted.

Act XXXVII. of 1855.

ACT XXXVII. OF 1855.*

RECEIVED THE G.-G.'S ASSENT ON THE 22ND DECEMBER 1855.

An Act to remove from the operation of the general laws and regulations certain districts inhabited by Santáls and others, and to place the same under the superintendence of an officer to be specially appointed for that purpose.

Preamble.

WHEREAS the general Regulations and Acts of Government, now in force in the Presidency of Bengal, are not adapted to the uncivilized race of people called Santáls, and it is therefore expedient to remove from the operation of such laws the district called the Dámin-i-Koh, and other districts which are inhabited principally by that tribe; It is enacted as follows:—

Districts removed from operation of general Regulations, Bengal Code.

1. *Clause 1.*—The districts described in the schedule to this Act are hereby removed from the operation of the general Regulations of the Bengal Code and of the laws passed by the Governor-General of India in Council, except so far as is hereinafter provided; and no law which shall hereafter be passed by the Governor-General of India in Council shall be deemed to extend to any part of the said districts, unless the same shall be specially named therein.

Proviso.

Provided that nothing herein contained shall† remove any part of the said districts from the operation of Regulation X. of 1804 of the Bengal Code; nor shall this Act affect any revenue-settlement, nor any law relating to the recovery of permanently-settled land-revenue due under the same, nor any law relating to the sale of lands for arrears of revenue, or relating to patní-taluqs or to the sale thereof for arrears of rent, nor any law relating to mutations or batwára, or to any other matter to which the Lieutenant-Governor of Bengal shall at any time notify in the *Calcutta Gazette* that the general laws and Regulations shall extend.

Superintendence of districts.

Clause 2.—The said districts shall be placed under the superintendence and jurisdiction of an officer or officers to be appointed in that behalf by the Lieutenant-Governor of Bengal, and such officer or officers shall be subject to the directions and control of the said Lieutenant-Governor.

Administration of justice and collection of revenue.

2. The administration of civil and criminal justice and the collection of the revenue, not being permanently-settled land-revenue within the said districts, are hereby vested in the officer or officers to be so appointed:

Suits exceeding value of 1,000 rupees.

Provided that all civil suits in which the matter in dispute shall exceed the value of one thousand rupees shall be tried and determined according to the general laws and regulations in the same manner as if this Act had not been passed:

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* Act XXXVII. of 1855 has been declared in force in the Santál Parganas by Reg. III. of 1872, s. 3, as amended by Reg. III. of 1886, s. 2. It will be repealed by Act XIV. of 1874 when that Act is brought into force in the Santál Parganas.

† Here certain words, repealed by Act XII. of 1891, Sch. I., have been omitted.

Collection of permanently-settled land-revenue.

Provided also that all permanently-settled land-revenue shall be collected and paid at the same places and in the same manner as if this Act had not been passed.

Administration of civil and criminal justice.

3. In the administration of civil and criminal justice, the officer or officers appointed under this Act shall be guided by the spirit and principle of the civil and criminal laws administered in the Courts of the East India Company in the Presidency of Bengal, but shall not be bound to take the fatwa of a law-officer; and he or they may hold his or their Courts either within the said district or at any place or places that may be appointed for that purpose by the said Lieutenant-Governor; and any person liable to be imprisoned in any civil or criminal jail may be imprisoned in any civil or criminal jail, as the case may be, which the said Lieutenant-Governor may order, whether the same be in or out of the said district.

Decisions final.

4. *Clause 1.*—All decisions in civil suits and sentences in criminal cases, which shall be passed by such officer or officers, to the extent of the powers which may be from time to time conferred upon them respectively by the Lieutenant-Governor of Bengal, according to the provisions of this Act, shall be final:

Confirmation of death-sentence.

Provided that no sentence of death passed by any such officer shall be carried into effect until it shall have been confirmed by the Sadr Court, and provided also that it shall be lawful for the said Lieutenant-Governor to direct that an appeal shall lie

Appeal.

in any class of civil suits or criminal trials from any officer appointed under this Act to any other officer appointed under the same, and also to direct the officer or officers appointed under this Act to refer to the Sadr Court for sentence any class of criminal trials.

Procedure on references to Sadr Court.

Clause 2.—Upon the receipt of any criminal trial referred to the Sadr Court under clause 1 of this section, the said Court shall, without submitting the proceedings for the fatwa of their law-officer, proceed to pass final judgment or such other order as may seem to the Court requisite and proper, in the same manner as if the trial had been referred in ordinary course by a Sessions Judge; and in any case in which sentence of death passed by an officer under this Act shall be transmitted to the Sadr Court for confirmation, the said Court may either confirm the same or pass such other judgment warranted by law as may appear to the said Court to be just and proper.

Saving of laws relating to European British subjects.

5. Nothing in this Act shall alter the laws now in force with respect to the amenability of European British subjects to any Court or officer for any act of a criminal nature committed within the district.

6. [*Repealed by Act XIV. of 1870.*]

Act VIII. of 1856.

SCHEDULE.

BHAGALPUR.

Pargana Bhágalpur ... { (So much of it as is embraced within the Police-jurisdictions of Kahalgáon and Parsá.)
" Bahádarpur.
" Chituliyá.
" Kahalgáon ... { (So much of it as lies to the east of the Geruá Nálá and to the south of the River Ganges.)
" Goddá.
" Hándwá.
" Jamuní.
" Kánkjaul.
" Pasai.
" Sultánábád.
" Tiliyágarhí.
" Ambár.
" Akbarnagar.
" Hazártakkí.
" Ináyatnagor.
" Makráin.
" Sultánganj.
" Amolmotiyá.
Tappá Belpattá.
" Manihárí.
The Dámin-i-Koh ...Including the Rájmahál Hills.

BIRBHUM.

Pargana Darin Mauleshwar (northern portion).
Tappá Kandit Karaiyá.
" Muhammadábád.
Pargana Nauní.
" Pabbiyá.
Tappá Sarath Deogarh.
Pargana Malárpur.
" Haripur.
" Hukmápur ... (So much of it as lies north of the River Mor.)

Such portions of Parganas appertaining to Purniyá, Máldah, and Murshidábád, as lie on the right bank of the Ganges above the village of Daunápur, in the Bhágalpur Pargana of Kánkjaul.

Repealed by Act XIV of 1874

ACT VIII. OF 1856.*

RECEIVED THE G.-G.'S ASSENT ON THE 14TH MARCH 1856.

An Act for the better control of the Gaols within the "Presidency of Bombay."

WHEREAS it is expedient to make provision for the better control of the gaols within the "Presidency of Bombay;"† It is enacted as follows :—

Preamble.

1. [*Repealed by Act XIV. of 1870.*]

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* Act VIII. of 1856 has been declared to apply to the whole of the Bombay Presidency, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 5.

† In the title and preamble the words quoted have been substituted for the words, "Presidencies of Fort St. George and Bombay," by Act XII. of 1891, Sch. II.

Control of gaols. Power to appoint person to inspect and superintend them.

2. The control of all gaols in "the said Presidency"* shall be vested in the Governor in Council; and it shall be lawful for the said Governor in Council, with the previous sanction of the Governor-General of India in Council to the creation of the office, to appoint such person or persons as he shall think fit to inspect and superintend the said gaols, subject to the orders of the said Governor in Council, and to vest in such person or persons such power and authority for the purposes aforesaid as to the said Governor in Council may seem proper.

ACT IX. OF 1856.†

RECEIVED THE G.-G.'S ASSENT ON THE 11TH APRIL 1856.

An Act to amend the Law relating to Bills of Lading.

Preamble.

WHEREAS by the custom of merchants a bill of lading of goods being transferable by endorsement, the property in the goods may thereby pass to the endorsee, but nevertheless all rights in respect of the contract contained in the bill of lading continue in the original shipper, or owner, and it is expedient that such rights should pass with the property; and whereas it frequently happens that the goods in respect of which bills of lading purport to be signed have not been laden on board, and it is proper that such bills of lading in the hands of a *bonâ-fide* holder for value should not be questioned by the master or other person signing the same, on the ground of the goods not having been laden as aforesaid; It is enacted as follows:—

Rights under bills of lading to vest in consignee or endorsee.

1. Every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom the property in the goods therein mentioned shall pass upon or by reason of such consignment or endorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself.

Not to affect right of stoppage *in transitu* or claims for freight.

2. Nothing herein contained shall prejudice or affect any right of stoppage *in transitu*,‡ or any right to claim freight against the original shipper or owner, or any liability of the consignee or endorsee by reason or in conse-

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* In s. 2, the words quoted have been substituted for the words "each of the said Presidencies" by Act XII. of 1891, Sch. II.

† Based on 18 & 19 Vic., c. 111.

Act IX. of 1856 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh	See *Gazette of India*	Dec. 4, 1880, Pt. I., p. 672.
West Jalpaiguri	Ditto	Mar. 5, 1881, Pt. I., p. 74.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	Oct. 22, 1881, Pt. I., p. 504.
The District of Silhat	Ditto	Oct. 4, 1879, Pt. I., p. 631.

‡ See Act IX. of 1872, ss. 99-106.

Act XI. of 1856.

quence of his being such consignee or endorsee, or of his receipt of the goods by reason or in consequence of such consignment or endorsement.

Bill of lading in hands of consignee, &c., conclusive evidence of the shipment as against master, &c.

3. Every bill of lading in the hands of a consignee or endorsee for valuable consideration, representing goods to have been shipped on board a vessel, shall be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods or some part thereof may not have been so shipped, unless such holder of the bill of lading shall have had actual notice at the time of receiving the same that the goods had not in fact been laden on board :

Proviso.

Provided that the master or other person so signing may exonerate himself in respect of such misrepresentation, by showing that it was caused without any default on his part, and wholly by the fraud of the shipper or of the holder, or some person under whom the holder claims.

ACT XI. OF 1856.*

RECEIVED THE G.-G.'S ASSENT ON THE 11TH APRIL 1856.

An Act for the better prevention of desertion by European Soldiers from the Land Forces of Her Majesty in India.

Preamble.

WHEREAS it is expedient to make better provision for apprehending and detaining European deserters from the Land Forces in the service of Her Majesty in India, and for punishing persons who aid and encourage such deserters ; It is enacted as follows :—

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* Act XI. of 1856 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

Sindh	See *Gazette of India*	Dec. 4, 1880, Pt. I., p. 672.
Aden	Ditto	June 28, 1879, Pt. I., p. 434.
West Jalpaiguri	Ditto	Mar. 5, 1881, Pt. I., p. 74.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	Oct. 22, 1881, Pt. I., p. 504.
The Jhánsí Division	Ditto	Aug. 31, 1878, Pt. I., p. 546.
The scheduled portion of the Mirzápur District	Ditto	Mar. 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	May 31, 1879, Pt. I., p. 382.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán	Ditto	Jan. 30, 1886, Pt. I., p. 48.
The Scheduled Districts of the Central Provinces	Ditto	Dec. 13, 1879, Pt. I., p. 771.
The District of Silhat	Ditto	Oct. 4, 1879, Pt. I., p. 631.

It has been extended, under the same Act, to the Scheduled Districts of Kumáon and Garhwál.—See *Gazette of India*, Nov. 4, 1876, Pt. I., p. 606.

It has been declared, under the same Act, not to be in force in the Scheduled District of Lahaul.—See *Gazette of India*, May 1, 1886, Pt. I., p. 301.

Penalty on master in certain cases if a deserter be concealed on board his ship.

1. If it shall appear that any officer or soldier, being a deserter from the said Forces, has been concealed on board any merchant vessel, and that the master or person in charge of such vessel for the time being, though ignorant of the fact of such concealment, might have known of the same but for some neglect of his duty as such master or person, or for the want of proper discipline on board his vessel, such master or person shall be liable to a fine not exceeding five hundred rupees.

Proviso.

Provided always that no conviction for such offence as is hereinbefore described shall be lawful unless the same shall be stated in the charge which the party is called upon to answer; and in such charge it shall be lawful to state in the alternative that the party has either knowingly harboured or concealed a deserter on board his vessel, or has, by neglect of duty, or by reason of the want of proper discipline on board the vessel, allowed such deserter to be so concealed.

Charge may be in the alternative.

Jurisdiction.

2. Any person, whether a European British subject or not, who shall be guilty of an offence punishable under this Act, shall be punishable for the same by any Justice of the Peace for any of the Presidency-towns of Calcutta, Madras, and Bombay, Magistrate, or person lawfully exercising the powers of a Magistrate in any port within the territories of the East India Company within whose jurisdiction the offence may have been committed, or such person may have been apprehended or found, whether the offence shall have been committed within the local limits of the jurisdiction of such officer or not; and any person hereby made punishable by a Justice of the Peace shall be punishable on summary conviction.

Conviction to be quashed on merits only. Form of conviction, &c.

3. No conviction, order, or judgment of any Justice of the Peace, shall be quashed for error of form or procedure, but only on the merits; and it shall not be necessary to state on the face of the conviction, order, or judgment, the evidence on which it proceeds; but the depositions taken, or a copy of them, shall be returned with the conviction, order, or judgment, in obedience to any writ of *certiorari*; and if no jurisdiction appears on the face of the conviction, order, or judgment, but the depositions taken supply that defect, the conviction, order, or judgment, shall be aided by what so appears in such depositions.

Saving of proceedings under other Acts.

4. Nothing in this Act contained shall prevent any Justice of the Peace, Magistrate, or other officer having authority in that behalf, from committing for trial any person who shall be charged with an offence punishable under any other Act hereafter to be in force, notwithstanding that such offence may be also punishable under this Act.

Proviso.

Provided that no proceedings shall have been had against such person in respect of the same offence under this Act.

Commanding officer or Magistrate may issue warrants for apprehension of deserters.

5. Whenever, on information given on oath or solemn affirmation, where by law a solemn affirmation may be used instead of an oath, to the commanding officer of any fort, garrison, station, regiment, or detachment, at any port or place within the territories of the East India Company, in which no person lawfully exercising magisterial powers can be found, which oath or affirmation the several persons above-named shall severally under this Act have power to administer;

or whenever, on such information as aforesaid given to any Justice of the Peace, Magistrate, or person lawfully exercising the powers of a Magistrate, having jurisdiction within such port or place,

Act XII. of 1856.

there shall appear reason to suspect that any European officer or soldier belonging to the said Forces, who may have deserted or be absent without leave, is on board any ship, vessel, or boat, or is concealed on shore at any such port or place within the territories of the East India Company, it shall be lawful for such commanding officer or Justice of the Peace, Magistrate, or person lawfully exercising the powers of a Magistrate as aforesaid, to issue a warrant, authorizing the person or persons to whom such warrant may be addressed, to enter into and search, at any time of the day or night, any such ship, vessel, or boat, or any house or place on shore, and to apprehend any such officer or soldier, and to detain him in custody in order to his being dealt with according to law.

Warrant to whom to be addressed and by whom to be executed.

6. The warrant to be issued under the preceding section may be addressed to any European officer or soldier of the said Forces, or to all constables, peace-officers, and other persons who may be bound to execute the warrant of any Justice of the Peace, Magistrate, or person lawfully exercising the powers of a Magistrate, and acting in the execution of this Act; and all such persons shall be bound to execute, perform, and obey such warrant.*

Persons apprehended how to be dealt with, &c.

7. Every person who shall be apprehended under any warrant under the 5th section of this Act shall be brought without delay before a Justice of the Peace, Magistrate, or person lawfully exercising the powers of a Magistrate, in or near the place wherein such person shall have been arrested, who shall examine such person, and, if he shall be satisfied, either by the confession of such person or the testimony of one or more witness or witnesses, or by his own knowledge, that such person is a deserter from the said Forces, shall cause him to be delivered, together with any depositions and papers relative to the case, to the commanding officer of the regiment, corps, or detachment to which he shall belong, if the same shall be in or near the place of such arrest, or, if otherwise, then to the commanding officer of the nearest military station, in order that he may be dealt with according to law.

ACT XII. OF 1856.† Bengal

RECEIVED THE G.-G.'S ASSENT ON THE 9TH MAY 1856.

An Act to amend the law respecting the employment of Amins by the Civil Courts in the Presidency of Fort William.

Preamble.

WHEREAS the law by which the Civil Courts are authorized to employ amíns upon local investigations is defective, and requires amendment; ‡ It is enacted as follows:—

1. [*Repealed by Act XIV. of 1870.*]

Appointment of amíns.

2. In each district, officers to be designated Civil Court amíns shall be appointed for the purposes of this Act, and shall be remunerated by fixed monthly salaries.

* Now a police-officer may, without orders from a Magistrate, and without a warrant, arrest any person reasonably suspected of being a deserter from Her Majesty's Army or Her Majesty's Indian Army.—See the new Code of Criminal Procedure.

† Act XII. of 1856 has been declared to apply to the whole of Bengal, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s 6.

‡ Here certain words, repealed by Act XII. of 1891, Sch. I., have been omitted.

The number of amíns to be employed in each district, and the salaries to be allowed to them, shall be determined by the Local Government, with the sanction of the Governor-General of India in Council. Act XII. of 1856.

3. The Civil Court amíns shall be appointed by the Judge of the district, and the Judge shall from time to time attach them to the several Courts of the district, according as the state of business may require.

Amíns by whom appointed and to what Courts attached.

Provided that an amín attached to any particular Court may, with the sanction of the Judge, be employed occasionally by any other Court.

4. [*Repealed by Act X. of 1873.*]

5. The Civil Court amíns may be employed in any of the following duties :—

Duties of amíns.

i. in investigating or adjusting accounts in any suit or other judicial proceeding :

ii. in making local investigations when the Court may deem investigation on the spot to be requisite and proper for the purpose of elucidating the matters in dispute, or of ascertaining the amount of mesne-profits or damages in any suit or other judicial proceeding :

iii. in delivering over possession of lands, houses, and other immoveable property in execution of decrees or orders of Court :

iv. in the sale of moveable property, and of houses, gardens, and other immoveable property of the kind described in section 3, Regulation VII., 1825 : *

v. in ascertaining the sufficiency of sureties and the means of persons suing *in formâ pauperis*.

6, 7. [*Repealed by Act X. of 1861.*]

8. Whenever a Civil Court amín may be employed on any duty connected with a pending suit or the execution of a decree, except the sale of property, the Court shall estimate the time which the duty may be expected to occupy, and shall charge for the expense of the amín such fixed rate *per diem* as may be determined by the Sadr Court.

Expense of amíns how charged.

The amount shall be paid into Court by the party at whose instance or for whose benefit the amín is deputed, and shall be added to the costs of suit.

9. When a Civil Court amín shall be employed to sell property, a deduction at the rate of one anna in the rupee shall be made from the proceeds of the sale.

When employed to sell property, deduction from proceeds.

If no sale takes place by reason of the claim being satisfied, or for any other cause, a charge shall be made for the expenses of the amín according to the time he may be employed.

Expenses, if no sale takes place.

A deposit to meet this charge, calculated in the manner prescribed in the preceding section, shall be made before the amín is deputed, and shall be returned to the depositor if the sale takes place.

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* Repealed by Act XVI. of 1874.

Act XIII. of 1856. All sums paid for the employment of amíns, and all sums deducted from the proceeds of sales, shall be credited to Government.

Power of Civil Courts, North-Western Provinces, to employ revenue-officers.

10. Nothing contained in this Act shall be held to prohibit the Civil Courts in the North-Western Provinces of the Presidency of Fort William from making use of the agency of the Revenue-officers in investigations and adjustments of accounts connected with land paying revenue to Government.*

ACT XIII. OF 1856.†

RECEIVED THE G.-G.'S ASSENT ON THE 13TH JUNE 1856.

An Act for regulating the Police of the Towns of Calcutta, Madras, and Bombay.

Preamble.

WHEREAS it is expedient to consolidate and amend the laws relating to the police of the Towns of Calcutta, Madras, and Bombay; It is enacted as follows:—

Acts, &c., repealed.

1. The several Acts, and Rules, Ordinances, and Regulations, mentioned in the Schedule hereunto annexed, are hereby repealed, except so far as they repeal the whole or any part of any other Act, or Rule, Ordinance, and Regulation, and except as to any act or offence which shall have been done or committed, or to any money which shall have become due, or to any fine or penalty which shall have been incurred, or to any proceedings which shall have been commenced, before this Act shall come into operation.‡

Interpretation.

2. The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction (that is to say)—

the expression "Local Government" shall mean the person or persons for the time being immediately administering the executive government of that portion of the territories "under the Government of India" in which the town is situated: §

the word "Magistrate" shall mean any Magistrate of Police acting for the place where the matter requiring the cognizance of a Magistrate arises:

the word "town" shall include all places within the local limits of the jurisdiction of Her Majesty's Supreme Courts of Judicature at *Calcutta, Madras and* Bombay:

the word "property" shall include any chattel, money, or valuable security:

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* The second paragraph of s. 10, repealed by Act XII. of 1891, Sch. I., has been omitted.

† Repealed, as to Calcutta, by Bengal Act IV. of 1866: as to Madras, by Madras Act VIII. of 1867.

‡ Here certain words, repealed by Act XII. of 1891, Sch. I., have been omitted.

§ In the definition of Local Government, the words quoted have been substituted for the words "in the possession and under the government of the East India Company," by Act XII. of 1891, Sch. II.

words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number: Act XIII. of 1856.

words importing the masculine gender shall include females:

the word "person" shall include a corporation:

the word "month" shall mean calendar month:

the word "oath" shall include any affirmation or declaration lawfully substituted for an oath:

the word "cattle" shall, besides horned cattle, include horses, asses, mules, sheep, goats, and swine.

Appointment and removal of Commissioner of Police.

3. The administration of the police in each of the said towns shall be vested in an officer to be styled the Commissioner of Police for such town, who shall, from time to time, be appointed by the Local Government, and may be removed by the same authority, and who shall receive such salary as the Governor-General of India in Council shall allow.

All powers which by law are given to a Superintendent of Police in any such town shall be vested in the Commissioner of Police.*

Appointment of Deputies to Commissioner of Police.

4. The Local Government, with the sanction of the Governor-General in Council, may, from time to time, appoint one or more Deputies to the Commissioner of Police, who shall be competent to perform any of the duties assigned to that officer under his orders.

The Deputy Commissioner may be removed at any time by order of the Local Government.

Commissioner of Police shall not ordinarily be Magistrate.

5. The Commissioner of Police shall not ordinarily be a Magistrate of Police under this Act, but, with the sanction of the Governor-General of India in Council, may be appointed to that office, when the Local Government, for special reasons, may deem it expedient.

Commissioner of Police to be Justice of Peace, but to act only in certain cases.

6. The Commissioner of Police shall be appointed a Justice of the Peace, but, unless he is vested with the jurisdiction of a Magistrate of Police, he shall act as a Justice only so far as may be necessary for the preservation of the peace, the prevention of crimes, and the detection, apprehension, and detention of offenders in order to their being brought before a Magistrate of Police; and so far as may be necessary for the performance of the duties assigned to the Commissioner by this Act.

The Deputies to the Commissioner of Police may be appointed Justices of the Peace, and, if so appointed, shall act in that capacity, subject to the above restriction.

Constitution of police-force.

7. For each of the said towns there shall be a police-force, which shall consist of such number of officers and men, and shall be otherwise constituted in such manner, as shall be, from time to time, ordered by the Local Government, with the sanction of the Governor-General of India in Council.

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* Here certain words, repealed by Act XII. of 1891, Sch. I., have been omitted.

Act XIII. of 1856.

Police to be under control of Commissioner. Rules for its government to be made by Commissioner and approved by Government.

8. The police-force shall be under the exclusive direction and control of the Commissioner of Police, who may, from time to time, subject to the approbation of the Local Government, frame such orders and regulations as he shall deem expedient, relative to the general government of the force, the places of residence, the classification, rank, distribution, and particular service of the several members thereof; their inspection; the description of arms, accoutrements, and other necessaries to be furnished to them; and all such other orders and regulations relative to the said police-force as the said Commissioner shall, from time to time, deem expedient for preventing neglect or abuse, and for rendering such force efficient in the discharge of all its duties.

9. [*Repealed by Act XVI. of 1874.*]

Appointment, suspension, and dismissal, &c., of police.

10. The appointment of the members of the police-force shall rest with the Commissioner of Police, and he may, at any time, suspend or dismiss any member of the force whom he shall think remiss or negligent in the discharge of his duty, or otherwise unfit for the same.

11. For any lesser breach of discipline, or other misconduct not requiring the suspension or dismissal of the offender, a member of the police-force may be fined by the Commissioner in any sum not exceeding one-half of his monthly pay.

Additional penalties for police for neglect of duty, &c.

12. For neglect or violation of duty in his office, and for any breach of the orders and regulations framed as aforesaid, every member of the police, besides being suspended or dismissed from his employment at the discretion of the Commissioner, shall be liable, on conviction before a Magistrate, to a fine not exceeding one hundred rupees (which may be deducted from any salary then due to such offender), or to imprisonment, with or without hard labour, for any time not exceeding three months.

13. [*Repealed by Act XLVIII. of 1860.*]

Members to receive certificates vesting them with powers of constable.

14. Every member of the police-force shall receive on his enrolment a certificate (A), under the signature of the Commissioner of Police, by virtue of which he shall be vested with the powers, functions, and privileges of a constable. Such certificate shall cease to have effect whenever the person named in it is suspended or dismissed, or otherwise removed from employment in the force.

15. [*Repealed by Act XLVIII. of 1860.*]

Penalty for dismissed members not delivering up clothing, accoutrements, &c.

16. Every member of the police-force who shall be dismissed from, or shall cease to hold and exercise, his office, and who shall not forthwith deliver up his certificate, and all the clothing, accoutrements, and appointments, and other necessaries which may have been supplied to him for the execution of his duty, to the Commissioner or to such person, and at such time and place, as shall be directed by the said Commissioner, shall be liable, on conviction before a Magistrate, to imprisonment, with or without hard labour, for any time not exceeding one month.

And it shall be lawful for the Commissioner, or for any Magistrate, to issue his warrant to search for and seize all the clothing, accoutrements,

appointments, and other necessaries which shall not be so delivered over, wherever the same may be found. Act XIII. of 1856.

17. There shall be deducted from the salary and authorized allowances* of every member of the Bombay city police-force of a class not entitled to the benefit of the uncovenanted service pension-rules a sum according to such rate as the local Government shall direct, not being a greater rate than one anna in the rupee, which sum so deducted, and also the money accruing from stoppages from members of the said police-force during absence from sickness or other cause, and fines imposed on members thereof for misconduct, and from fines imposed by Magistrates upon drunken persons, or for assaults upon police-officers, and all moneys arising from the sale of worn or cast-off clothing or other articles supplied for the use of the police, shall, from time to time, be invested in such manner and in such securities as the Local Government may, in writing, direct, and the interest and dividends thereof, or so much of the same as shall not be required for the purposes hereinafter mentioned, shall be likewise invested as aforesaid, and accumulate, so as to form a fund, to be called "The Bombay City Police Superannuation Fund," and shall be applied from time to time to payment of such superannuation or retiring allowances or gratuities as may be ordered by the Local Government at any time to any of the aforesaid members of the police-force, as hereinafter provided.†

Bombay City Police Superannuation Fund.

18. It shall be lawful for the Local Government to sanction that any member of the said class of the police-force aforesaid may be superannuated, and receive thereupon out of the said Superannuation Fund a monthly pension, subject to the following conditions, that is to say:—

Superannuation pension to police.

First.—If the period during which the individual shall have actually served in the said police-force, after attaining the age of twenty-two years, be more than fifteen years, but less than twenty years, he may, on production of a certificate under the hand of the Police Surgeon that he is physically unfit for further efficient service in the police, and that such unfitness is not the result of intemperance, be granted a pension, the amount of which shall not exceed one-third of his monthly salary or authorized official allowances, calculated on an average of the five years next preceding the date of his application for pension.

Second.—If the period of his actual service in the said force, after attaining the age of twenty-two years, be over twenty years and under twenty-five years, the applicant may, on production of such a certificate as aforesaid, be granted a pension not exceeding in amount one-half of his salary or authorized allowances, calculated in the manner above stated.

Third.—If the period of his actual service in the said force, after attaining the age of twenty-two years, be upwards of twenty-five years, the applicant may be granted a pension not exceeding one-half of his salary or authorized allowances, calculated as above stated, without the production of such medical certificate.

19. If any member of the said police-force shall at any time become disqualified for further police-service by any wound or injury received in such service, he may be granted from the said fund a pension of such amount not

Allowances to officers disqualified by injury, &c., in execution of duty.

* See Bom. Act II. of 1879.

† Sections 17, 18, 19, as here printed, were substituted by Bom. Act I. of 1872 for those originally enacted.

Act XIII. of 1856.

exceeding one-half of his average pay and allowances during the five previous years of his service, or such gratuity as the Local Government may think fit.

Power to appoint special constables.

20. The Commissioner of Police may, of his own authority, appoint special constables to assist the police-force on any temporary emergency.

Appointment of additional constables on application of private persons.

21. The Commissioner of Police may also, if he shall think fit, on the application of any person showing the necessity of it, appoint any additional number of constables to keep the peace at any place within his jurisdiction, at the charge of the person applying, but subject to the orders of the said Commissioner, and for such time as he shall think fit; and every such constable shall receive a certificate, by virtue of which he shall be vested with all the powers, privileges, and duties of the constables belonging to the police-force:

Discontinuance.

Provided that the person upon whose application such appointment shall have been made may, upon giving one month's notice in writing to the Commissioner of Police, require that the constables so appointed at his expense shall be discontinued, and thereupon the said Commissioner shall discontinue such additional constables; and all moneys received by the Commissioner for the payment of any such additional constables shall be accounted for by him.

22, 23. [*Repealed by Act IV. of 1877.*]

Service of criminal process by police.

24. All summonses, subpœnas, and warrants issued in any criminal proceeding by a Commissioner or Deputy Commissioner of Police, shall be served and executed within the said towns by an officer of the police-force, and by none other.

Execution of warrants.

25. When any warrant shall be directed or delivered to any such officer, unless the authority issuing it shall order that it be executed without delay, such police-officer shall deliver the same to the superior officer in charge of the division to which he belongs, who shall appoint, by endorsement thereon, one or more police-officers to execute the same; and every police-officer whose name shall be so endorsed thereon shall have the same powers, privileges, and protection as if the same had been originally directed to him by name.

26 to **31.** [*Repealed by Act IV. of 1877.*]

32, 33, 34. [*Repealed by Act XLVIII. of 1860.*]

Fraudulent possession of stolen property.

35. *Clause 1.*—Whoever has in his possession, or conveys in any manner, any thing which may be reasonably suspected of being stolen or fraudulently obtained, shall, if he fail to account satisfactorily how he came by the same, be liable to a penalty not exceeding one hundred rupees, or to imprisonment, with or without hard labour, for any term not exceeding three months.

Power to summon persons declared by accused to have had possession within jurisdiction.

Clause 2.—If any person, charged with having or conveying any thing stolen or fraudulently obtained, shall declare that he received the same from some other person, or that he was employed as a carrier, agent, or servant, to convey the same for some other person, the Magistrate may cause every such other person, and also, if necessary, every former or pretended purchaser or other person through whose possession the

same shall have passed (provided that such other person shall be alleged to have had possession of the same within the jurisdiction of such Magistrate), to be brought before him and examined, and shall examine witnesses touching the same ; Act XIII of 1856.

and if it appear to such Magistrate that any person so brought before him had possession of such thing, and had reasonable cause to believe the same to have been stolen or unlawfully obtained, such person shall be liable to a penalty not exceeding one hundred rupees, or to imprisonment, with or without hard labour, for any term not exceeding three months.

Penalty if such possession fraudulent.

36, 37. [*Repealed by Act IV. of 1877.*]

38, 39, 40. [*Repealed by Act XLVIII. of 1860.*]

41, 42. [*Repealed by Act IV. of 1877.*]

43. [*Repealed by Act XLVIII. of 1860.*]

44, 45. [*Repealed by Act IV. of 1877.*]

46. Any person found, between sunset and sunrise, armed with any dangerous or offensive instrument whatsoever, with intent to commit any felonious act ;

Persons who may be arrested without warrant.

any reputed thief found between sunset and sunrise on board any vessel or boat, or lying or loitering in any bázár, street, road, yard, thoroughfare, or other place, who shall not give a satisfactory account of himself ;

any person found, between sunset and sunrise, having his face covered, or otherwise disguised, with intent to commit any felony ;

any person found, between sunset and sunrise, in any dwelling-house or other building whatsoever, without being able satisfactorily to account for his presence therein ; and

any person having in his possession, without lawful excuse (the proof of which excuse shall be on such person), any implement of house-breaking—

may be taken into custody by any police-officer without a warrant, and shall be liable to imprisonment, with or without hard labour, for a term not exceeding three months.

47. Whoever, not being a soldier or sailor in the Army or Navy of the Queen, or a police-officer, goes armed with any sword, spear, gun, or other offensive weapon, in any street, thoroughfare, or public place, unless by leave of the Commissioner of Police, shall be liable to be disarmed by any police-officer ;

Penalty for carrying arms without authority.

and the weapon so seized shall be forfeited to the Government, unless redeemed by payment of a fine, at the discretion of the Commissioner, not exceeding ten rupees.

48. Whoever, not being amenable to the Articles of War, takes or attempts to take *into Fort William at Calcutta, or Fort St. George, or* into the barracks or buildings occupied by the troops composing the garrison of Bombay, or into any military barracks, guard-rooms, or encampments within any of the said towns, or on board or alongside of any vessel of war belonging to Her Majesty in the ports of the said towns, any spirits or spirituous or fermented liquors, or intoxicating drugs or preparations, without the license in

Penalty for taking spirit into barracks or on war-vessels.

Act XIII. of 1856.

writing of the commanding officer (unless such articles belong to some person above the rank of non-commissioned officer), shall be liable to a fine not exceeding one hundred rupees or imprisonment for any term not exceeding two months, with or without hard labour; and such liquors, drugs, or preparations, and the vessels containing the same, shall be forfeited.

Penalty for taking spirit, &c., into jail.

49. Whoever takes, or attempts to take, without due permission, or throws, or attempts to throw, into any jail or house of correction, or into any public hospital, any spirits or spirituous or fermented liquors, or intoxicating drugs or preparations, shall be liable to a fine not exceeding fifty rupees, or to imprisonment, with or without hard labour, for any term not exceeding two months.

50, 51, 52. [*Repealed by Act XLVIII. of 1860.*]

Disorderly conduct in public-houses.

53. Whoever, being the keeper of any such house or place of public resort and entertainment in the said towns, knowingly permits drunkenness or other disorderly behaviour in such house or place, or knowingly suffers any gaming whatsoever therein, or who knowingly permits prostitutes, or persons of notoriously bad character, to meet or remain therein, or who wilfully harbours or conceals any soldier, seaman, or apprentice, knowing, or having reason to believe; such soldier, seaman, or apprentice, to be a deserter, shall be liable to a fine not exceeding one hundred rupees, and shall also be liable to forfeit his license.

Penalty for harbouring or concealing deserters from merchant-vessels.

54. Whoever, in any place within any of the said towns, wilfully harbours or conceals any seaman or apprentice belonging to a merchant-vessel, knowing, or having reason to believe, such seaman or apprentice to be a deserter, shall be liable to a fine not exceeding one hundred rupees.

55. [*Repealed by Act XLVIII. of 1860.*]

Penalty for owning, keeping, or being employed in, gaming-house, &c.

56. Whoever, being the owner or occupier, or having the use of any house, room, or place, opens, keeps, or uses the same for the purpose of gaming being carried on therein; and

whoever, being the owner or occupier of any house or room, knowingly and wilfully permits the same to be opened, kept, or used by any other person, for the purpose aforesaid; and

whoever has the care or management of, or in any manner assists in conducting, the business of any house, room, or place opened, kept, or used for the purpose aforesaid; and

whoever advances or furnishes money for the purpose of gaming with persons frequenting such house, room, or place—

shall be liable to a fine not exceeding five hundred rupees, or to imprisonment, with or without hard labour, for any term not exceeding three months.

Penalty for being found playing in gaming-house.

57. Whoever is found in any such house, room, or place, playing or gaming with cards, dice, counters, money, or other instruments of gaming, or is found there present for the purpose of gaming, whether playing for any money, wager, stake, or otherwise, shall be liable to a fine not exceeding two hundred rupees, or to imprisonment, with or without hard labour, for any term not exceeding one month;

and any person found in any common gaming-house during any gaming or playing therein shall be presumed, until the contrary be proved, to have been there for the purpose of gaming. Act XIII. of 1856.

Power to issue warrant to police-officer to enter gaming-house, to arrest, seize, and search.

58. If the Commissioner of Police, upon information on oath, and after such enquiry as he may think necessary, has reason to believe that any house, room, or place is used as a common gaming-house, he may, by his warrant, give authority to any inspector or superior officer of police, to enter, with such assistance as may be found necessary, by night or by day, and by force if necessary, any such house, room, or other place, and to take into custody all persons whom he finds therein, whether or not then actually gaming, and to seize all instruments of gaming, and all moneys, and securities for money, and articles of value, reasonably suspected to have been used or intended to be used for the purpose of gaming, which are found therein, and to search all parts of the house, room, or place which he shall have so entered, when he has reason to believe that any instruments of gaming are concealed therein, and also the persons of those whom he so takes into custody, and to seize and take possession of all instruments of gaming found upon such search.

59. [*Repealed by Act XLVIII. of 1860.*]

On conviction for keeping gaming-house, instruments of gaming to be destroyed, &c.

60. On conviction of any person for keeping any such common gaming-house, or being present therein for the purpose of gaming, all the instruments of gaming found therein shall be destroyed by order of the Magistrate, who may also order all or any of the securities for money and other articles seized, not being instruments of gaming, to be sold and converted into money, and the proceeds thereof, with all monies seized therein, to be forfeited, or, in his discretion, may order any part thereof to be returned to the persons appearing to have been severally thereunto entitled.

Proof of playing for stakes unnecessary.

61. It shall not be necessary, in order to convict any person of keeping a common gaming-house, or of being concerned in the management of any common gaming-house, to prove that any person found playing at any game was playing for any money, wager, or stake.

Witnesses indemnified.

62. Any person who shall have been concerned in gaming contrary to this Act, and who shall be examined as a witness before a Magistrate on the trial of any person for a breach of any of the provisions of this Act, relating to gaming, and who, upon such examination, shall make true and faithful discovery, to the best of his knowledge, of all things as to which he shall be so examined, and who shall thereupon receive from the said Magistrate a certificate in writing to that effect, shall be freed from all prosecutions under this Act for anything done before that time in respect of such gaming.

Act not to apply to certain games.

63. Nothing in the foregoing provisions of this Act contained shall be held to apply to any game of mere skill played at licensed hotels, taverns, or eating-houses, or places of public resort.

Penalty for cheating at games.

64. Whoever, by any fraud or unlawful device or ill-practice in playing at or with cards, dice, or other game, or in bearing a part in the stakes, wagers, or adventures, or in

Act XIII. of 1856.

betting on the sides or hands of them that do play, or in wagering on the event of any game, sport, pastime, or exercise, wins from any other person, for himself or any other or others, any sum of money or valuable thing, shall be deemed guilty of obtaining such money or valuable thing from such other person by a false pretence, with intent to cheat or defraud such person of the same, and, being convicted thereof, shall be liable to punishment accordingly.

Portion of fine may be paid to informer.

65. The Magistrate may direct any portion, not exceeding one-fourth, of any fine which shall be levied under sections 56 and 57 of this Act, or any part of the moneys or proceeds of articles seized and ordered to be forfeited under section 60, to be paid to an informer.

Gambling in streets.

66. A police-officer may apprehend without warrant any person found gaming with cards, dice, counters, money, or other instruments of gaming in any public street, place, or thoroughfare, or publicly fighting cocks, or present as a spectator of such cock-fighting; and such person shall be liable to a fine not exceeding twenty rupees, or to imprisonment, with or without hard labour, for any term not exceeding one month, and such instruments of gaming and money shall be forfeited.

67. [*Repealed by Act XLVIII. of 1860.*]

Pawn-brokers and money-changers to report stolen property under penalty for neglect.

68. If any property regarding which written or printed information shall be given by any police-officer to any pawn-broker or dealer in second-hand property or money-changer as having been stolen, embezzled, or fraudulently obtained, shall then be or thereafter come into the possession of or be offered in pawn or for sale or change to such pawn-broker, dealer, or money-changer, he shall, without unnecessary delay, give information to the Commissioner of Police or at the police-office that certain property answering the description of the said property was offered to him, or is in his possession, and shall also state the name and address given by the party by whom the same was offered, or from whom the same was received, under a penalty not exceeding fifty rupees for each and every such neglect or offence;

provided always that, in the case of wearing apparel or other articles which it may be difficult for such pawn-broker or dealer to trace out and identify, no fine shall be exigible in respect of not reporting such articles, unless it shall appear to the Magistrate that such articles had been knowingly concealed by such pawn-broker or dealer.

Broker or dealer altering or defacing stolen articles after information of theft, deemed receiver of stolen goods.

69. If any pawn-broker or dealer in second-hand goods, or worker in gold or silver, after receiving information of the theft or the embezzling or the fraudulent disposal of any metals, goods, or articles of whatsoever description, melts, alters, defaces, or puts away the same, or causes the same to be melted, altered, defaced, or put away, without having previously received the permission of the Commissioner of Police, and it shall be found that such metals, goods, or articles were stolen, embezzled, or fraudulently disposed of by the person from whom such pawn-broker, dealer, or worker received the same, or by any other person, then and in such case it shall be held that such pawn-broker, dealer, or worker knew that such metals, goods, or articles were stolen, embezzled, or fraudulently disposed of, and such pawn-broker, dealer, or worker shall be proceeded against according to law as a receiver of stolen goods, or as being a party to the fraud, and punished accordingly; and no other evidence

of his guilt shall be necessary than evidence of such melting, altering, defacing, or putting away, after receiving information as aforesaid. Act XIII. of 1856.

Manufacture or possession of gunpowder.

70. Whoever manufactures gunpowder, or, without a license from the Commissioner of Police, has in his possession, in any house, shop, warehouse, or other building, at any one time, a greater quantity of gunpowder than ten pounds, shall be liable to a fine not exceeding five hundred rupees, and also to forfeit such gunpowder so manufactured or possessed, together with the vessel or receptacle in which it may be contained.

Licenses by Commissioner of Police for sale and deposit of gunpowder, &c.

71. The Commissioner of Police may grant to any person a license for the sale or keeping in deposit of any quantity of gunpowder not exceeding fifty pounds, on such conditions, and for such term, not exceeding one year, as shall be specified in the license; and any person who shall be guilty of a breach of any of such conditions shall, on conviction before a Magistrate, be liable to a fine not exceeding two hundred rupees, and to forfeit all gunpowder so kept in deposit contrary thereto, and the vessels containing it, and also, in the discretion of the Magistrate, or of the Commissioner, to forfeit his license.

Licenses for conveying and removing gunpowder.

72. The Commissioner of Police may grant to any person a license for the transit and carrying of gunpowder from one place to another, in such manner and in such quantity as he may deem advisable; and any person, not being duly licensed in that behalf, who carries or conveys a greater quantity of gunpowder than one pound from one place to another, shall be liable to a fine not exceeding fifty rupees.

Commissioner of Police may issue warrant to search for gunpowder, &c.

73. The Commissioner of Police, on credible information laid before him on oath, may issue his warrant authorizing a police-officer to search in the day-time any house, shop, magazine, or other building or place in which he has reasonable ground to suspect that any gunpowder is manufactured, sold, or kept, or any boat, carriage, cart, or other vehicle in which any gunpowder may be suspected to be carried, or any person suspected of carrying the same contrary to the provisions of this Act; and all gunpowder found on such search shall, together with the vessels or receptacles in which it may be stored, be immediately seized and kept, pending the judgment of a Magistrate.

Act not to apply to Government powder, &c.

74. None of the four last preceding sections shall extend to any Government-magazine or store, or building for the making or deposit of gunpowder under the authority or for the use of the Government, or to any gunpowder belonging to Her Majesty.

75, 76. [*Repealed by Act XLVIII. of 1860.*]

Regulation of public processions, &c., and of carriages and persons at places of public resort.

77. The Commissioner of Police, from time to time, as occasion may require, may, subject to the orders of the Local Government, make rules—

for the conduct of all assemblies and processions in the public roads, streets, or thoroughfares, prescribing the routes by which, and the times at which, such processions may pass; and

for keeping order in the public roads, streets, thoroughfares, ghâts, and landing-places, and all other places of public resort, and preventing obstructions thereof on the occasion of such assemblies and processions; and in the neighbourhood of places of worship during the time of public worship; and

Act XIII. of 1856. in any case when the roads, streets, or thoroughfares, ghâts or landing-places, may be thronged, or may be liable to be obstructed;

Licenses for use of music in streets.

and may give licenses for the use of music in the streets on the occasion of native festivals and ceremonies;

and every person opposing or not obeying the orders so issued by the Commissioner of Police, or violating the conditions of such license, shall be liable to a fine not exceeding one hundred rupees.

78. [*Repealed by Act XLVIII. of 1860.*]

Commissioner may refuse to register or cancel registry of unsafe boats.

79. The Commissioner may refuse to register any boat, or may cancel the registration thereof whenever it may appear to him to be in an unsafe state.

80. Whenever any accident shall occur to a registered boat, attended with loss of the life of any one of the crew or passengers, the mánjhí, or, if the mánjhí be not forthcoming, the owner of the boat shall report the circumstances at the police-office; and if the mánjhí or the owner, as the case may be, without lawful excuse, neglect or delay to make such report, he shall be liable to a fine not exceeding fifty rupees.

Penalty for neglecting or delaying to report accident to boat attended with loss of life.

81, 82. [*Repealed by Act XLVIII. of 1860.*]

83, 84. [*Repealed by Act IV. of 1877.*]

85. Whoever, in any public road, street, thoroughfare, or place, begs or applies for alms, or exposes or exhibits any sores, wounds, bodily ailment, or deformity; with the object of exciting charity or of obtaining alms; or whoever seeks for, or obtains, alms by means of any false statement or pretences, shall be liable to imprisonment, with or without hard labour, for any term not exceeding one month.

Beggars.

Police may arrest without warrant on view of offence.

86. Any police-officer may arrest, without a warrant, any person committing, in his view, any offence against this Act.

87. [*Repealed by Act IV. of 1877.*]

88. Whoever commits an offence on or with respect to the person or property of another, or, in committing an offence under this Act, injures or damages the person or property of another, may, if his name and address be unknown, be apprehended by the person injured or by any person who may be using the property to which the injury may be done, or by the servant of either of such persons, or by any person authorized by or acting in aid of him, and may be detained until he give his name and address, and satisfy such person that the name and address so given are correct, or until he can be delivered into the custody of a police-officer.

Apprehension by private persons.

89. If any person lawfully apprehended under the last preceding section shall assault or forcibly resist the person by whom he shall be so apprehended, or any person acting in his aid, he shall be liable to a fine not exceeding two hundred rupees.

Penalty for assaulting or resisting person apprehending under preceding section.

90. Every person taken into custody without a warrant by a police-officer shall be taken to the station-house, in order that such person may be detained until he can be brought before a Magistrate, or until he shall enter into recognizances, with or without sureties, for his appearance before a Magistrate.

Detention of persons taken into custody by police without warrant.

91. Whenever, any person is brought to a station-house charged with any offence against this Act other than a felony, or whenever a person charged with a felony is in custody of any police-officer without a warrant, it shall be lawful for the officer in charge of such station-house, or any superior officer of police, if he shall deem it prudent, and, in the case of felony, if he shall deem it probable that the person is falsely accused, to enlarge such person on his own recognizance, with or without sureties, conditioned as hereinafter mentioned.

Power to take recognizance.

92. Every recognizance so taken shall be without fee or reward, and shall be conditioned for the appearance of the person thereby bound before a Magistrate at his next sitting, and the time and place of appearance, and the sum thereby acknowledged (not exceeding one thousand rupees), shall be specified in the said recognizance, or in the condition thereof; and the officer taking the recognizance shall enter into a book, to be kept for the purpose, the name, residence, and occupation of the party, and his surety or sureties (if any) entering into such recognizance, together with the condition thereof, and the sum thereby acknowledged, and shall return every such recognizance to the Magistrate present at the time and place when and where the party is bound to appear.

Condition of recognizance.

93. If information shall be given on oath to the Commissioner of Police that there is reasonable cause for suspecting that anything stolen or unlawfully obtained is concealed or lodged in any dwelling-house, building, or other place, or any ship or vessel, the Commissioner, by special warrant under his hand directed to any police-officer, may cause such dwelling-house, building, or other place, or ship or vessel, to be entered and searched at any time of the day, or by night, if power for that purpose be given by such warrant;

Powers of Commissioner of Police acting on information of stolen goods being concealed.

and the said Commissioner, if it shall appear to him necessary, may empower such police-officer, with such assistance as may be found necessary (such officer having previously made known his authority), to use force for the effecting of such entry, whether by breaking open doors or otherwise; and if upon search thereupon made such thing shall be found, then to convey the same before a Magistrate, or to guard the same on the spot until the offenders are taken before a Magistrate, or otherwise dispose thereof in some place of safety; and, moreover, to take into custody, and carry before the said Magistrate, every person found in such house or place, or ship or vessel, who shall appear to have been privy to the deposit of any such thing, knowing or having reasonable cause to suspect the same to have been stolen, or otherwise unlawfully obtained.

94. If information shall be given to any officer of police not below the rank of inspector that there is reasonable cause for suspecting that any stolen property is concealed or lodged in any dwelling-house or other place, and he shall have good grounds

Power to search for stolen property without warrant.

Act XIII. of 1856.

for believing that, by reason of the delay in obtaining a search-warrant, the property is likely to be removed, the said officer, in virtue of his office, may search for specific articles alleged to have been stolen in the houses and places specified;

provided always that a list of the articles stolen or missing be delivered or taken down in writing, with a declaration stating that the robbery has been committed, and that the informant has good ground to believe that the property is deposited in such house or place; and provided, further, that the person who lost the goods, or his representative, accompany the officer in the search.

95 to **98**. [*Repealed by Act IV. of 1877.*]

99. [*Repealed by Act XLVIII. of 1860.*]

100 to **104**. [*Repealed by Act IV. of 1877.*]

105. [*Repealed by Act XLVIII. of 1860.*]

106. [*Repealed by Act IV. of 1877.*]

107. If any person, upon entering into such recognizance as is by this Act authorized to be taken, do not afterwards appear pursuant to such recognizance, the Magistrate before whom he ought to have appeared shall certify the fact of such non-appearance on the back of the recognizance, and thereupon the sum thereby acknowledged shall be recoverable in the manner provided by this Act for levying fines.

If Magistrate certifies non-appearance of person pursuant to recognizance, sum acknowledged may be recovered as fine.

108 to **111**. [*Repealed by Act IV. of 1877.*]

112. [*Repealed by Act XLVIII. of 1860.*]

113. Whenever any person dies intestate within any of the said towns, leaving moveable property therein under two hundred rupees in value, which property is, in the absence of any person entitled thereto, taken charge of by the police for the purpose of safe custody, it shall be lawful for the Commissioner of Police to order the said property to be delivered, without letters of administration taken out, to any person claiming to be entitled to the whole or any part thereof;

Moveable property of intestate under two hundred rupees in value may be taken charge of by police, and delivered to claimant.

provided he shall be satisfied of the title of the claimant, and of the value of the property, by the oath or affirmation of the claimant, or by such other evidence as he may require.

114. The Commissioner of Police may, at his discretion, before making any order under the preceding section, take such security as he may think proper for the due administration and distribution of such property.

Commissioner of Police may take security for due administration.

And nothing hereinbefore contained shall affect the right of any person to recover the whole or any part of the same from the person to whom it may have been delivered pursuant to such order.

Saving of right of other person claiming.

115. [*Repealed by Act XLVIII. of 1860.*]

116. It shall be lawful for the Commissioner of Police, by order in writing, to be affixed at the principal police-stations, and also to be published in some public newspaper, to appoint from time to time certain periods within which any dogs found straying in the streets, or beyond the enclosures of the houses of the owners of such dogs, may be destroyed.

Power to appoint periods during which stray dogs may be killed.

SCHEDULE OF FORMS.

Act XV. of 1856.

FORM A.

A. B. has been appointed a superintendent, inspector, jamadár, dárogha, or peon (*as the case may be*) in the ( ) police-force, and is vested with the powers, functions, and privileges of a constable.

FORM B.

[*Repealed by Act XII. of 1891, Sch. I.*]

ACT XV. OF 1856.*

RECEIVED THE G.-G.'S ASSENT ON THE 25TH JULY 1856.

An Act to remove all legal obstacles to the marriage of Hindú Widows.†

Preamble.

WHEREAS it is known that, by the law as administered in the Civil Courts established in the territories in the possession and under the government of the East India Company, Hindú widows, with certain exceptions, are held to be, by reason of their having

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* Act XV. of 1856 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

Sindh	See *Gazette of India*.	Dec. 4, 1880, Pt. I., p. 672.
West Jalpaiguri	Ditto	Mar. 5, 1881, Pt. I., p. 74.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	Oct. 22, 1881, Pt. I., p. 504.
The Jhánsí Division	Ditto	Aug. 31, 1878, Pt. I., p. 546.
Kumáon and Garhwál	Ditto	Nov. 4, 1876, Pt. I., p. 605.
The scheduled portion of the Mirzápur District	Ditto	May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	May 31, 1879, Pt. I., p. 382.
The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán	Ditto	Jan. 30, 1886, Pt. I., p. 48.
The District of Lahaul	Ditto	May 1, 1886, Pt. I., p. 301.
The Scheduled Districts of the Central Provinces	Ditto	Dec. 13, 1879, Pt. I., p. 771.
Coorg	Ditto	Dec. 28, 1878, Pt. I., p. 747.
The District of Silhat	Ditto	Oct. 4, 1879, Pt. I., p. 631.
The Districts of Kámrup, Naugong, Darrang, Sibságar, Lakhimpur, Goálpára (excluding the Eastern Dvárs), and Káchár (excluding the North Káchár Hills)	Ditto	Aug. 24, 1878, Pt. I., p. 533.

It has been extended, under the same Act, to the following Scheduled Districts :—

The Tarái District	See *Gazette of India*	Sep. 23, 1876, Pt. I., p. 505.
The Andaman and Nicobar Islands	Ditto	Mar. 25, 1882, Pt. I., p. 148.

† As to the effect of unchastity in the case of a widow who has once inherited, see 13 B. L. R. 1.

Act XV. of 1856.

been once married, incapable of contracting a second valid marriage, and the offspring of such widows by any second marriage are held to be illegitimate and incapable of inheriting property; and whereas many Hindús believe that this imputed legal incapacity, although it is in accordance with established custom, is not in accordance with a true interpretation of the precepts of their religion, and desire that the civil law administered by the Courts of Justice shall no longer prevent those Hindús who may be so minded from adopting a different custom, in accordance with the dictates of their own consciences; and whereas it is just to relieve all such Hindús from this legal incapacity of which they complain; and the removal of all legal obstacles to the marriage of Hindú widows will tend to the promotion of good morals and to the public welfare; It is enacted as follows:—

Marriage of Hindú widows legalized.

1. No marriage contracted between Hindús shall be invalid, and the issue of no such marriage shall be illegitimate, by reason of the woman having been previously married or betrothed to another person who was dead at the time of such marriage, any custom and any interpretation of Hindú law to the contrary notwithstanding.

Rights of widow in deceased husband's property to cease on her re-marriage.

2. All rights and interests which any widow may have in her deceased husband's property by way of maintenance, or by inheritance to her husband or to his lineal successors, or by virtue of any will or testamentary disposition conferring upon her, without express permission to re-marry, only a limited interest in such property, with no power of alienating the same, shall, upon her re-marriage, cease and determine as if she had then died;* and the next heirs of her deceased husband, or other persons entitled to the property on her death, shall thereupon succeed to the same.

Guardianship of children of deceased husband on the re-marriage of his widow.

3. On the re-marriage of a Hindú widow, if neither the widow nor any other person has been expressly constituted, by the will or testamentary disposition of the deceased husband, the guardian of his children, the father or paternal grandfather, or the mother or paternal grandmother, of the deceased husband, or any male relative of the deceased husband, may petition the highest Court, having original jurisdiction in civil cases in the place where the deceased husband was domiciled at the time of his death, for the appointment of some proper person to be guardian of the said children, and thereupon it shall be lawful for the said Court, if it shall think fit, to appoint such guardian, who, when appointed, shall be entitled to have the care and custody of the said children, or of any of them, during their minority, in the place of their mother; and in making such appointment, the Court shall be guided, so far as may be, by the laws and rules in force touching the guardianship of children who have neither father nor mother.

Provided that, when the said children have not property of their own sufficient for their support and proper education whilst minors, no such appointment shall be made otherwise than with the consent of the mother, unless the proposed guardian shall have given security for the support and proper education of the children whilst minors.

Nothing in this Act to render any childless widow capable of inheriting.

4. Nothing in this Act contained shall be construed to render any widow, who, at the time of the death of any person leaving any property, is a childless widow, capable of inheriting the whole or any share of such property, if,

* *Parvati* v. *Bhiku*, 4 Bom. A. C. J. 25: *Akora Suth* v. *Borcani*, 2 B. L. R. 198.

before the passing of this Act, she would have been incapable of inheriting the same by reason of her being a childless widow.

Saving of rights of widow marrying, except as provided in sections 2, 3, 4.

5. Except as in the three preceding sections is provided, a widow shall not, by reason of her re-marriage, forfeit any property, or any right to which she would otherwise be entitled; and every widow who has re-married shall have the same rights of inheritance as she would have had, had such marriage been her first marriage.

Ceremonies constituting valid marriage to have same effect on widow's marriage.

6. Whatever words spoken, ceremonies performed, or engagements made, on the marriage of a Hindú female who has not been previously married, are sufficient to constitute a valid marriage, shall have the same effect, if spoken, performed, or made on the marriage of a Hindú widow; and no marriage shall be declared invalid on the ground that such words, ceremonies, or engagements are inapplicable to the case of a widow.

Consent to re-marriage of minor widow.

7. If the widow re-marrying is a minor whose marriage has not been consummated, she shall not re-marry without the consent of her father, or, if she has no father, of her paternal grandfather, or, if she has no such grandfather, of her mother, or, failing all these, of her elder brother, or, failing also brothers, of her next male relative.

Punishment for abetting marriage made contrary to this section.

All persons knowingly abetting a marriage made contrary to the provisions of this section shall be liable to imprisonment for any term not exceeding one year, or to fine, or to both.

Effect of such marriage.

And all marriages made contrary to the provisions of this section may be declared void by a Court of law. Provided that, in any question regarding the validity of a marriage made contrary to the provisions of this section, such consent as is aforesaid shall be presumed until the contrary is proved, and that no such marriage shall be declared void after it has been consummated.

Proviso.

Consent to re-marriage of major widow.

In the case of a widow who is of full age, or whose marriage has been consummated, her own consent shall be sufficient consent to constitute her re-marriage lawful and valid.

ACT XVIII. OF 1856.

RECEIVED THE G.-G.'S ASSENT ON THE 23RD AUGUST 1856.

An Act relating to the administration of the public revenues in the Town of Calcutta.

Preamble.

WHEREAS it is expedient that the Collector of Calcutta* should have power to employ any Deputy Collector subordinate to him in the performance of any part of the duties of his office; It is enacted as follows:*—

1. [*Repealed by Act XII. of 1891, Sch. I.*]

2. [*Repealed by Act XVIII. of 1869.*]

* Here certain words, repealed by Act XII. of 1891, Sch. I., have been omitted.

Act XX. of 1856.

Collector may entrust any part of his duties to his Deputy.

3. It shall be lawful for the Collector of Calcutta to employ any Deputy Collector subordinate to him, in the performance of any part of the duties of his office under* Act XXIII. of 1850; and all Rules, Regulations, and Acts relating to the office of Deputy Collector, shall be of the same force within the town of Calcutta as in other parts of the territories subject to the Presidency of Fort William in Bengal.

ACT XX. OF 1856.†

RECEIVED THE G.-G.'S ASSENT ON THE 14TH NOVEMBER 1856.

An Act to make better provision for the appointment and maintenance of police-chaukídárs in cities, towns, stations, suburbs, and bázárs in the Presidency of Fort William in Bengal.

Preamble.

WHEREAS it is expedient to make better provision for the appointment and maintenance of police-chaukídárs in cities, towns, stations, suburbs, and bázárs in the Presidency of Fort William in Bengal "and the territories under the administration of the Chief Commissioner of Oudh"‡; It is enacted as follows:—

Existing assessment to be levied until revised.

1.§ The monthly assessment levied under Regulation XXII., 1816‖ and Act XV. of 1837,‖ in any city or station at the time of the passing of this Act, shall continue to be levied until the same shall be revised and altered under the provisions of this Act.

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* Here certain words, repealed by Act XII. of 1891, Sch. I., have been omitted.

† Act XX. of 1856 was declared, by the Laws Local Extent Act (XV. of 1874), s. 7, to be in force in the whole of the N.-W. Provinces, except the Scheduled Districts. It has been declared, by notification under the Scheduled Districts Act (XIV. of 1874), to be in force in the scheduled portion of the Mirzápur District, and in Jaunsar Báwar, and has been extended, by notification under the same Act, to Kumáon and Gárhwal and the Tarái Parganas.

For declaration as to Act XX. of 1856 being in force in Oudh, see Act XVIII. of 1876, s. 3 (*e*).

For power to extend Act XX. of 1856 to cantonments, see Act XIII. of 1889, s. 18.

Act XX. of 1856 ceases to have effect in areas for which Municipal Boards come into existence under the N.-W. P. and Oudh Municipalities Act (XV. of 1883)—See Act XV. of 1883, s. 17 (*2*). See also Act XIV. of 1883, s. 3 (*2*).

Act XXII. of 1871 is to be read with, and taken as part of, Act XX. of 1856.—See s. 6 of Act XXII. of 1871.

As to the Panjáb, under s. 14 of the Cantonments Act (XXII. of 1864), since repealed, the Local Government has extended the provisions of Act XX. of 1856 to the cantonments of Multán, Rawalpindi, Sealkot, Kasauli, Dagshai, Sabáthu, Jhelam, Jálandhár, Meean Meer, and Pesháwar; under the Cantonments Act (III. of 1880), s. 12, to the cantonments of Jatogh, Ferozepur, and Amritsar; and under s. 2, to the town of Kalka. The Local Government may direct that Act XX. of 1856 shall cease to be in force in any local area over which a District Board has authority under the District Boards Act (XX. of 1883).—See s. 69, *ib.*

‡ In the preamble, the words quoted have been inserted by the Oudh Laws Act (XVIII. of 1876), Sch. II.

§ A portion of s. 1, repealed by Act XIV. of 1870, has been omitted.

‖ Ben. Reg. XXII. of 1816 and Act XV. of 1837 were repealed by that part of s. 1 of Act XX. of 1856 which has itself been repealed by Act XIV. of 1870.

2.* The provisions of this Act shall have effect in all cities, stations, towns, suburbs, and bázárs in the said Presidency "or territories"† to which the Local Government may at any time extend the same by notification in the official Gazette. Provided always that this Act shall not be extended to any agricultural village.

To what places Act shall apply.

Proviso.

In all places in which this Act is now in force it shall be deemed to have been extended under the provisions of this section.

3. The Government may, by notification to be published in the official Gazette, unite, for the purposes of this Act, any city, town, suburb, station, or bázár, or any part or parts of a city, town, suburb, station, or bázár, with any other city, town, suburb, station, or bázár, or part or parts of a city, town, suburb, station, or bázár; and in such case all the provisions of this Act, applicable to a city, town, suburb, station, or bázár, shall apply to such union.

Unions may be formed.

4. For the purposes of this Act the Local Government may define and declare the limits of any city, town, suburb, station, bázár, or union; and all occupiers of houses within any such city, town, suburb, station, bázár, or union as aforesaid, or within such limits as shall be so defined as aforesaid, shall be liable to be assessed or rated according to the provisions of this Act for the purpose of maintaining the chaukídárs appointed to be maintained in such city, town, station, suburb, bázár, or union.

Government may define limits of cities, towns, &c.

5. If any house be let out in portions to different persons, or be let out to, or occupied by, lodgers or travellers, the person who shall so let the same, or who shall receive the rents or payments from such persons or lodgers or travellers, shall, for the purposes of this Act, be deemed to be the occupier of such house.

Houses let to lodgers how assessed.

6. The Magistrate may cause a name to be given to any street and affixed in such place or places as he may think fit, and may also cause a number to be affixed to every house in any street or mahalla, for the purpose of identifying such house; and if any person shall wilfully remove, obliterate, or destroy, such name or number, he shall be liable, on conviction by a Magistrate, to a fine not exceeding twenty rupees.

Penalty for removing, &c., name of street or number of house.

7. The Magistrate shall determine the number of chaukídárs to be maintained in any city, town, or other such place as aforesaid; but the number of chaukídárs so to be maintained shall not exceed one to every twenty-five houses.

Magistrate to determine number of chaukídárs. Proviso.

8. The chaukídárs appointed under this Act may be of different grades, and the wages to be paid to the several grades shall be determined by the Magistrate.

Grades and wages of chaukídárs.

9. The Magistrate shall determine the total amount required to be raised in any year in any city, town, or other such place as aforesaid, for the purpose of maintaining the chaukídárs appointed to be maintained therein, and for the purposes specified in sections 33, 34, 35, and 36 of this Act, together with such sum as the Magistrate may consider necessary to provide against the contingency of losses

Magistrate to determine sum to be raised annually.

* S. 2 has been substituted for the original by Act XXII. of 1871, s. 1.

† In s. 2, as substituted by Act XXII. of 1871, the words quoted have been inserted by the Oudh Laws Act (XVIII. of 1876), Sch. II.

Act XX. of 1856.

from defaulters in the current year, and the amount of losses, if any, actually sustained from defaulters in the preceding year.

Nature of tax to be levied.

10. The tax to be levied in any city, town, or other place as aforesaid, for the purposes of this Act, may be either an assessment according to the circumstances and the property to be protected, of the persons liable to the same, or a rate on houses and grounds according to the annual value thereof.

The Local Government, on the report of the Magistrate and Commissioner,* shall determine in each case whether the tax to be levied shall be such assessment or such rate.

Limitation of tax.

11.† If the tax be an assessment according to the circumstances and the property to be protected of the persons liable to the same, the amount assessed in respect of any one house shall not be more than the pay of a chaukídár of the lowest grade. If the tax be a rate on houses and grounds, it shall not exceed five per centum of the annual value thereof.

Rate how to be ascertained.

12. For the purpose of making a rate under this Act, the annual value of the houses and grounds liable to the rate shall be computed and ascertained upon an estimate of the gross annual rent at which the same might reasonably be expected to let from year to year.

Grounds used for purposes of trade shall be liable to the rate, but grounds used for the purpose of cultivation or for depasturing cattle shall not be liable.

Magistrate may exempt occupiers unable to pay.

13. The Magistrate may, at his discretion, exempt from the assessment or rate, or may relieve from the payment of his assessment or rate, any occupier who may be unable from poverty to pay the same.

Constitution of panchâyats.

14. For the purposes hereinafter mentioned, the Magistrate shall constitute and appoint a panchâyat for each such city, town, or other place as aforesaid, or, when he may see fit to divide any such city, town, or place into convenient divisions, for each division thereof, and shall issue a sanad of appointment, specifying the names, residence, business, or other description of the persons appointed, and the period for which the appointment is made.

Every panchâyat shall consist of three or five respectable persons residing or carrying on business in or near to any such city, town, or other place, or in or near to any such division thereof.

Magistrate may appoint non-resident person to be a member.

Provided that, instead of any one such person, the Magistrate may appoint any person whom he may think fit to be a member of the panchâyat, notwithstanding such person may not reside or carry on business in or near to such city, town, or other place, or in or near to any such division thereof.

Duties of panchâyat.

15. The panchâyat so appointed, or the majority of them, shall, once in every year, if required so to do by the Magistrate, prepare and make, in accordance with the rules laid

* Here the words " of Circuit," repealed by Act XII. of 1891, Sch. I., have been omitted.

† S. 11 has been substituted for the original by Act XXII. of 1871, s. 2.

down in the requisition, an assessment or rate upon the several persons liable to be assessed or rated in respect of their occupation of property within the district (whether city, town, or other place as aforesaid, or any division thereof) for which the panchâyat shall be appointed, and shall enter the same in a list which shall specify the names of the several occupiers of property within the district liable to be assessed or rated under the provisions of this Act, the trade, business, or other description of such occupier, the property occupied, and the amount payable monthly by such occupier. Act XX. of 1856.

If the tax be a rate on the annual value of the property occupied, such annual value and the total amount of the annual rate shall also be specified.

Magistrate's requisition.

The requisition of the Magistrate to the panchâyat to make out such list shall be in the form marked A or B, as the case may be, set forth in the appendix to this Act annexed, or to the like effect.

Panchâyat may revise existing assessment or rate.

16. The panchâyat shall, if required by the Magistrate so to do, instead of making a new assessment or rate, revise and amend the assessment or rate then in force.

Magistrate may amend and settle assessment or rate as revised.

17. When an assessment or rate shall have been made or revised, as the case may be, the panchâyat shall forward to the Magistrate the list containing the same; and the Magistrate shall revise, and, if necessary, amend and settle it.

Assessment or rate to be published.

18. When the assessment or rate shall have been settled, the Magistrate shall sign the list, and shall cause one copy thereof, together with a notification prepared according to the form marked C in the appendix to this Act, or to the like effect, and written in the language of the province in which the city, town, or place is situate, to be stuck up in some conspicuous place in the district for which the assessment or rate has been made; and another copy, together with a like notification, at the nearest police-thánâ; and shall also cause a third copy to be deposited in his own office.

Assessment or rate to stand good for one year. Effect of change of occupation before new assessment or rate.

19. Unless revised or corrected as hereinafter provided, every assessment or rate under this Act shall stand good for one whole year, and until a new one is made, and in case the occupier of any property included in any assessment or rate shall be changed before a new one is made, the new occupier shall be liable in respect of such property for any portion of the assessment or rate which shall have become payable during his occupation instead of the former occupier thereof; and, after notification to such person, the Magistrate may cause his name to be substituted in the said list for the name of the former occupier.

Revised assessment or rate deemed new.

Every assessment or rate which shall be revised according to the provisions of section 16 shall be deemed a new assessment or rate.

Continuance of assessment of past year.

Provided always that, if no new assessment or rate is made within the first three months of any year, the list of the previous year shall be republished according to the provisions of section 18, and shall thereupon be deemed to be the assessment or rate for the current year, and shall be open to appeal under the next succeeding section.

Act XX. of 1856.

Appeal from assessment or rate.

20. Any person assessed or rated, who shall be dissatisfied with his assessment or rate, or who shall dispute his occupation of any property, or his liability to be assessed or rated, may appeal on unstamped paper to the Magistrate, and the Magistrate, after making such inquiries as he deems necessary, by examination of the appellant on oath or solemn affirmation, or otherwise, may confirm the assessment or rate or amend the same.

Award of costs.

In case the Magistrate confirm the assessment or rate, he may award costs against the appellant.

Decision on appeal. Bar of jurisdiction.

The decision of the Magistrate in such cases shall be final, and no objection shall be taken to any assessment or rate, nor shall the liability of any person to be assessed or rated be questioned in any other manner or by any other Court.

Limitation of appeal.

Provided that no appeal shall be received after the expiration of one month from the time of the notification of the assessment or rate prescribed by section 18, or of the notification of the substitution of the name of an occupier under section 19, unless the Magistrate, upon reasonable cause shown, shall extend the time for receiving such appeal.

Commissioner may direct revision of assessment or rate.

21. The Commissioner,* with the consent of the Local Government, may at any time direct the Magistrate to revise the assessment or rate of any city, town, or other place as aforesaid, specifying the reasons which, in his opinion, render such revision necessary, and the Magistrate shall, according to such direction, revise and, if necessary, amend the same.

Magistrate may direct revision at any time of year, for reasons stated.

22. The Magistrate may require the panchâyat to revise the assessment or rate at any period during the year; but on every such occasion he shall address a written order to the panchâyat, specifying the reasons which render such revision necessary, and requiring an amended return within a stated period.

Publication of assessment or rate as revised.

23. Whenever any assessment or rate is revised during the year as provided in the two last preceding sections, a revised list, together with a notification as prescribed in section 18, shall be prepared and published in the manner therein directed.

Objections.

And all objections to such revised assessment or rate shall be made and dealt with in the manner prescribed in section 20.

Penalty for refusal to serve on panchâyat.

24. If any person appointed a member of a panchâyat refuse to undertake the office, or omit to perform the duties thereof, and do not, within fifteen days from the date of his appointment, shew satisfactory grounds for his refusal or omission, or provide such a substitute as the Magistrate approves, the Magistrate may fine such person in a sum not exceeding fifty rupees.

If panchâyat refuse or omit to act, Magistrate may assume their functions.

25. If the persons appointed a panchâyat, or a majority of them, refuse or omit, for a period of fifteen days after the receipt of an order from the Magistrate, to perform the duties required of them, the Magistrate may himself

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* Here the words "of Circuit," repealed by Act XII. of 1891, Sch. I., have been omitted.

make or revise the assessment or rate, and may enforce the same as if it had been made or revised in the first instance by the panchâyat: Act XX. of 1856.

Proviso. Provided that the functions of the panchâyat shall not thereby absolutely cease and determine, but may be resumed at any time, only not so as to invalidate any act done by the Magistrate under this section.

Residents only bound to act on panchayat.

26. No person shall be bound to act on a panchâyat unless he shall reside or carry on business within the limits of the district for which the panchâyat is to be appointed.

Duration of panchayat and limitation of service thereon.

27. Every panchâyat shall be appointed for the period of one year, and no person shall be compelled to serve on a panchâyat for more than one year at a time, or within less than three years after the expiry of previous service; but nothing in this section shall prevent any person from being appointed to serve on a panchâyat at any time whatsoever with his own consent.

Member of panchayat removeable only on application of rate-payers.

28. If a majority of the persons assessed or rated in any district for which a panchâyat shall be appointed, not being in arrear, make application in writing to the Magistrate for the removal of any member of the panchâyat appointed for such district, the Magistrate, if he think it expedient, may remove such member from the panchâyat.

Vacancies in panchayat how supplied.

29. If any vacancy shall occur among the members of a panchâyat, or if any member appointed shall refuse or decline or be unable to act, the Magistrate may nominate and appoint another person to supply the vacancy or to act in the stead of such member, subject to the rules already laid down as to the original appointment of members; but such appointment may be made by a written communication to the person appointed, and it shall not be necessary to issue a new sanad under section 14 of this Act.

Panchayat to report misconduct of chaukidars, or death or absence.

30. The panchâyat shall give notice to the Magistrate of any neglect or misconduct on the part of any chaukídár within the district for which they are appointed, which shall come to their knowledge; and shall also give notice of any vacancy which shall occur in consequence of the death or absence of any chaukídár, or from any other cause.

Appointment and duty of sadr panchayat.

31. In cities and large towns containing three or more divisions or districts, the Magistrate may appoint a sadr panchâyat, consisting of not less than five members, who may be selected either from the members of the local panchâyats or from any other residents of the city or town.

It shall be the duty of the said panchâyat to assist the Magistrate, when required so to do, in carrying out generally the objects of this Act, and particularly in revising the assessment or rate made by the district panchâyats, and enquiring into and reporting on appeals preferred against the same.

Appointment and registry of chaukídars.

32. The chaukídárs to be employed under this Act shall be appointed by the Magistrate, and the Magistrate shall cause to be kept a register, in which shall be entered the name, age, place of residence, and previous occupation of every person so appointed, with the date of his appointment.

Act XX. of 1856.

Appointment of jamadars and inspectors.

33.* Subject to the approval of the Commissioner† the Magistrate may appoint such number of jamadárs and inspectors as may be necessary for the supervision and control of the chaukídárs:

Their number.

Provided that the number of these officers shall not be greater than one jamadár to fifteen chaukídárs, and one inspector to sixty chaukídárs.

Appointment of tax-collectors and other establishment.

34.* Subject to the approval of the Commissioner† the Magistrate may appoint one or more tax-collectors or dároghas, and such other servants as may be necessary, for preparing, or assisting the panchávat in preparing, the assessment or rate, for copying the same, for collecting the tax, keeping the accounts and records, and otherwise carrying out the purposes of this Act.

Security.

The Magistrate shall take from every tax-collector or dárogha such security for the due disposal of the sums collected by him as may be thought necessary.

Contingent expenses.

35.* The Magistrate may further incur any reasonable expense in the purchase of stationery in providing badges, dresses, and weapons for the chaukídárs, and for any other contingencies that may seem to him necessary.

Surplus funds may be devoted to conservancy-purposes.

36.* After paying the wages of chaukídárs, and defraying the charges specified in the three last preceding sections of this Act, the Magistrate may, with the sanction of the Commissioner,† appropriate any sum which may be available to the purpose of cleansing the city, town, or place, or of lighting or otherwise improving the same.

Register of assessments.

37. The tax-dároghas shall prepare from the lists hereinbefore mentioned a register, which shall be attested by the Magistrate or his Deputy or Assistant, and shall contain the names of all persons assessed or rated so far as they can be ascertained, the property in respect of which the assessment or rate in each case is imposed, and the amount payable monthly by each person.

Collection of assessment.

38.‡ On such dates as may be fixed by the panchávats for payment of instalments of the tax, the tax-dárogha shall proceed in person or through some one of his office-establishment to collect the amount due for the current month from each person subject to the tax; and for all sums so collected, the dárogha shall grant a receipt:

Provided that, with the sanction of the Commissioner§ previously obtained, the collection may be made quarterly instead of monthly; and in such case the amount due for each quarter shall be collected in the last month of that quarter.

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* As to raising money for the purposes specified in ss. 33 to 36, see s. 9, *supra*, p. 181.

† Here the words, "of Circuit," repealed by Act XII. of 1891, Sch. I., have been omitted.

‡ S. 38 has been substituted for the original by Act XXII. of 1871, s. 3.

§ In s. 38 (as amended by Act XXII. of 1871, s. 3), the word "Commissioner" has been substituted for the words "Commissioners of Circuit" by Act XII. of 1891, Sch. II.

Act XX. of 1856.

39. The tax-dárogha shall remit to the Magistrate, in such manner as the Magistrate shall direct, all sums of money collected either by himself or by any one of his establishment, and the Magistrate or some officer of his establishment authorized on that behalf shall give the dárogha a receipt for every sum of money so remitted.

Remittance of collection.

The Magistrate shall also cause all such sums of money to be credited to a separate fund, to be called the chaukídári fund of the city, town, or place in or on account of which they are collected.

40.* The tax-dárogha shall prepare all summonses and processes to be issued against defaulters, and shall make the usual returns thereto, and shall keep a regular account of all distresses levied and sales made by him for the realization of arrears.

Preparation of summons, &c.

41. "On the tenth day after the date fixed for the payment of instalments of the tax," † or as soon after as possible, the tax-dárogha shall deliver or transmit to the Magistrate, in one list, a statement of all defaulters, the property in respect to which they are assessed or rated, the amount of the monthly assessment or rate, and the amount due from each.

Report of defaulters to Magistrate.

42. On receipt of the aforesaid list, the Magistrate shall issue a summons, against each of the defaulters therein mentioned, requiring him either to pay the demand, or to attend at the kachahrí of the Magistrate within reasonable time, to be specified in the summons, to show cause for his refusal.

Summoning defaulters.

43. If any defaulter fail to appear in answer to the summons, or, having appeared, fail to satisfy the Magistrate that no arrear is due from him, the Magistrate may issue a warrant to the tax-dárogha, authorizing him to levy the whole or any part of the demand by distress and sale of any goods and chattels belonging to the defaulter, or being at any time upon the premises in respect of which the arrear is due; and the Magistrate's order as contained in the warrant shall be final.

Assessment to be levied from defaulters by distress and sale.

44. The tax-dárogha shall make an inventory of all goods and chattels seized under the Magistrate's warrant, and shall give previous notice of the sale, and the time and place thereof, by beat of drum, in the district in which the property is situated.

Sale how conducted.

If the arrear be not paid with costs, or the warrant be not in the meantime discharged or suspended by the Magistrate, the goods and chattels seized shall be sold at the time and place specified, in the most public manner possible; and the proceeds shall be applied in discharge of the arrears and costs, and the surplus, if any, shall be returned on demand to the person in possession of the goods and chattels at the time of the seizure.

Proceeds how applied.

The tax-dárogha shall make a return of all such sales to the Magistrate in the form specified in Appendix D, and the costs upon every such proceeding shall be such as are mentioned and set forth in Appendix E annexed to this Act.

Returns of sale.
Costs.

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* In Oudh s. 40 is repealed.—See Act XVIII. of 1876, Sch. II.

† The words quoted in s. 41 have been substituted for the original by Act XXII. of 1871, s. 4.

Act XX. of 1856.

45. Any tax-dárogha or other servant appointed under this Act, and any chaukídár or officer of police, who shall purchase any property at any such sale as aforesaid, shall be liable, upon conviction before a Magistrate, to a penalty not exceeding fifty rupees; and the property shall be confiscated.

Penalty for tax-dárogha purchasing at such sales.

46. If no sufficient goods or chattels belonging to a defaulter, or being upon the premises in respect of which he is assessed or rated, can be found within the district in which the premises are situate, the Magistrate may issue his warrant to the názir of his Court for the distress and sale of any personal property or effects belonging to the defaulter within any other part of the jurisdiction of the Magistrate, or for the distress and sale of any personal property belonging to the defaulter within the jurisdiction of any other Magistrate whatsoever; and such other Magistrate shall back the warrant so issued, and cause it to be executed, and the amount, if levied, to be remitted to the Magistrate issuing the warrant.

Sale of property beyond limits of town, &c.

47. All goods and chattels, except tools or implements of trade, which may be found upon any premises in respect of which an arrear is due, shall be liable to be distrained for the recovery of such arrear.

Goods liable to distress.

If any goods and chattels belong to any person other than the defaulter, the defaulter shall indemnify the owner of such goods and chattels from any damage he may sustain by reason of such distress or by reason of any payment he may make to avoid such distress or any sale under the same:

Owner of goods to be indemnified by defaulter.

Provided that no distress shall be made for any arrears due under this Act, after the expiration of six calendar months from the time when such arrears became due.

Limit to distress.

48. Every person who shall wilfully obstruct or molest any tax-dárogha or any of his establishment in the performance of their duties under this Act, or shall fraudulently conceal, remove, or dispose of any of his property for the purpose of avoiding a distress under the provisions of this Act, or shall knowingly assist any other person in so doing, shall be liable, on conviction before a Magistrate, to a penalty not exceeding fifty rupees.

Penalty for obstructing tax-dárogha in execution of duty.

49. The Magistrate shall receive and try all complaints preferred on oath or solemn affirmation against any tax-dárogha or other person appointed under this Act, for extortion, malversation, or other misconduct in the discharge of his duty.

Magistrates to try complaints against tax-dárogha for extortion, &c.

On proof of any such offence, the tax-dárogha or other person as aforesaid shall be liable to dismissal from office, and to imprisonment, with or without labour, for a period not exceeding six months, and may also be compelled to refund any money corruptly or unduly exacted or received, and to deliver up any effects which may have been illegally distrained or sold, or the value thereof, or, in default and until such delivery or refund be made, shall be liable to further imprisonment, with hard labour, for not more than six months.

Penalty for extortion, &c.

But nothing in this section shall be taken to prevent the Magistrate from committing any tax-dárogha or other person as aforesaid for trial before the Sessions Court, or to

Saving of power to commit.

limit the power of the Sessions Court in regard to the punishment of such offences under the general law. Act XX. of 1856.

50. The chaukídárs and the jamadárs and inspectors appointed under this Act shall exercise all the powers, and perform all the duties, and be subject to all the liabilities, of police-officers as prescribed in the general Regulations of the Bengal Code or Acts of the Government of India for the time being in force, so far as such powers, duties, and liabilities are not inconsistent with, or otherwise expressly provided for by, this Act.

Powers, duties, and liabilities of chaukídárs, jamadárs, and inspectors.

The chaukídárs and the jamadárs and inspectors are in all respects subordinate to the police-dárogha of the thánd within the limits of which they may be employed.

51. Every chaukídár appointed under this Act shall wear a badge with a number; and the name of the city, town, place, or division for which he is appointed, engraved thereon.

Chaukídárs to wear badges.

52. Every chaukídár and every jamadár and inspector appointed under this Act shall have power, without warrant, to apprehend and convey immediately to the nearest police-station any person or persons taken in the act of committing any heinous offence, or whom he shall have just cause to suspect to be about to commit or to have committed a heinous offence, or against whom a hue and cry shall be raised:

Power of chaukídars—

to arrest without warrant:

Second.—He shall have power to prevent obstructions and nuisances on the roads and streets:

to prevent nuisances:

Third.—He shall give immediate intelligence to the police-dárogha of the resort to his division of any receivers of stolen goods, or of any robbers or other persons of notorious or suspected character, or of any circumstances likely to occasion a breach of the peace:

to give intelligence of resort of thieves, &c.:

Fourth.—He may stop, examine, and, if necessary, detain any person who shall be reasonably suspected at any time of having or conveying anything stolen, or who shall be found between sunset and sunrise lying or loitering in any highway, yard, or other place, and unable to give a satisfactory account of himself, and may convey such person to the nearest police-station.

to examine and detain suspected persons.

53. If a chaukídár or other police-officer be unable to effect an arrest, he may require all persons present to assist him; and any person who refuses or neglects to comply with such requisition shall be liable, on conviction by a Magistrate, to a fine not exceeding fifty rupees, or to imprisonment not exceeding two months.

Assistance to chaukídars in making arrests.

54. On the fifteenth day of each month, or on such other day not later than the fifteenth day of the month as the Magistrate may appoint, the chaukídárs and the jamadárs and inspectors (if any) shall be mustered at the thánd to which they are attached, and the police-dárogha or muharrir of the thánd shall there pay them the wages due to them up to the close of the preceding month, and shall at the same time take the receipt of each chaukídár in an official register

Chaukídars, &c., how paid.

Act XX. of 1856.

of receipts prepared for the purpose; and the dárogha, after signing the register in attestation of its correctness, shall transmit the same to the Magistrate.

Punishment of officers for neglect of duty, &c.

55. Any chaukídár and any jamadár or inspector appointed under this Act, who is convicted of neglect of duty or misconduct, shall be liable to fine to an extent not exceeding half a month's wages, or to imprisonment for any period not exceeding six months.

Suspension or dismissal of police-officers.

56. The Magistrate may suspend or dismiss any officer appointed under this Act, whom he shall think remiss or negligent in the discharge of his duty, or otherwise unfit for the same.

Fines how disposed of.

57. All fines levied under this Act shall be credited to the chaukídárí fund,* and held available for the purposes of this Act.

58. [*Repealed by Act X. of 1872.*]

Control over proceedings of Magistrate and Commissioner.

59. All the proceedings of a Magistrate under this Act, except as otherwise specially provided, shall be subject to the control of the Commissioner,† and all the proceedings of the Commissioner† shall be subject to the control of the Local Government.

60. [*Repealed by Act XII. of 1891, Sch. I.*]

Interpretation-clause.

61. Wherever in this Act, or in any appendix thereto, there is nothing in the context requiring a different interpretation—

the word "Magistrate" shall include a Joint Magistrate and any person lawfully exercising the powers of a Magistrate:

the word "house" shall include any shop or warehouse:

the word "bázár" shall mean any place of trade where there is a collection of shops or warehouses:

the word "district" shall mean a city, town, bázár, or union, or any division thereof:

the expression "police-dárogha" shall include any tahsíldár or náib-tahsíldár entrusted with police-jurisdiction.

APPENDIX A.‡

To

[*Here insert the names, places of abode, business, or other description of the panchayat.*]

I do hereby require you, the panchayat appointed under Act XX. of 1856, with all reasonable expedition, not exceeding (*here insert a period to be fixed by the Magistrate*) from the date hereof, to make out and forward to me, the undersigned Magistrate of the zila of , a fair and equitable assessment upon the several occupiers of houses, shops, and buildings in the (*here describe the city, town, place, or division*), for the purpose of raising the sum of rupees required

* As to this fund, see s. 39, *supra*, p. 187.

† Here the words "of Circuit," repealed by Act XII. of 1891, Sch. II., have been omitted.

‡ See s. 15, *supra*, p. 182.

for the maintenance of chaukídárs for the year commencing on and other expenses authorized by Act XX. of 1856. You shall regulate and determine the amount of assessment to be levied from every such occupier according to the circumstances and the property to be protected of each person. But the amount assessed in respect of any one house shall not exceed rupees (*here insert the pay of a chaukídár of the lowest grade*).* Act XX. of 1856.

If the occupier of any house in the said district shall be unable, on the ground of poverty, to pay the assessment to which he is liable under this Act, you shall exempt him from the same; but the property occupied, together with the name and description of such occupier, shall be specified in the list, together with the ground of exemption.

If any house be let out in portions to different persons, or be let out to or occupied by lodgers or travellers, the person who shall so let the same, or who shall receive the rents or payments from such persons or lodgers or travellers, shall be deemed the occupier of such house, and shall be assessed accordingly.

The assessment which you are hereby required to make shall specify the name of every occupier of property liable to be assessed, the name, trade, or business, or other description of the person assessed, the annual assessment, and the quota payable monthly; and may be in the following form, or to the like effect:—

Property occupied.	Name of occupier.	Profession or business or other description.	Amount of monthly payment.

APPENDIX B.†

To

[*Here insert the names, places of abode, business, or other description of the panchâyat.*]

I do hereby require you, the panchâyat appointed under Act XX. of 1856, with all reasonable expedition, not exceeding (*here insert a period to be fixed by the Magistrate*) from the date hereof, to make out and forward to me, the undersigned Magistrate of the zila of , a fair and equal rate upon the several occupiers of houses, shops, and buildings, and of grounds occupied for the purpose of trade or business, in the (*here describe the city, town, place, or division*), for the purpose of raising the sum of rupees required for the maintenance of chaukídárs for the year commencing on and other expenses authorized by Act XX. of 1856. You shall regulate and determine the amount of the rate to be levied from every such occupier according to the annual value of the property occupied.

The rent at which any such property may reasonably be expected to let for one year shall be deemed the annual value of such property. The rate shall be an equal percentage, not exceeding five per cent., of such annual value.

Any person occupying ground for the purpose of trade is to be rated in respect thereof, but a person occupying ground for the purpose of cultivation or for depasturing cattle is not to be rated in respect thereof.

If the occupier of any house or ground in the said district shall be unable, on the ground of poverty, to pay the rate to which he is liable under this Act, you shall exempt him from the same; but the property occupied, together with the name and description of such occupier, shall be specified in the list, together with the ground of exemption.

* Here certain words, repealed by Act XXII. of 1871, s. 5, have been omitted.

† See s. 15, *supra*, p. 182.

Act XX. of 1856.

If any house be let out in portions to different persons, or be let out to or occupied by lodgers or travellers, the person who shall so let the same, or who shall receive the rents or payments from such persons, or lodgers, or travellers, shall be deemed the occupier of such house, and shall be rated accordingly.

The rate which you are hereby required to make shall specify the name of every occupier of property liable to be rated, the name, trade, or business, or other description of the person rated, the annual rateable value of the property, the annual rate, and the quota payable monthly; and may be in the following form, or to the like effect:—

Property occupied.	Name of occupier.	Profession or business or other description.	Annual value of property.	Annual rate.	Amount of monthly payment.

APPENDIX C.*

An assessment (*or* rate, *as the case may be*), made for (*here describe the city, town, village, or other place or division for which the rate is made*) upon the several occupiers of houses and other property in the said district, pursuant to Act XX. of 1856, for the purpose of maintaining chaukídárs for such district.

Property occupied.	Names of occupiers.	Profession or business.	Amount of monthly (*or* quarterly) assessment (*or* rate).

Whereas the above assessment (*or* rate, *as the case may be*) has been duly made pursuant to Act XX. of 1856, and has been revised and settled by me, the undersigned Magistrate of , the several persons whose names are included in the said assessment (*or* rate) are hereby required to pay the monthly (*or* quarterly) contributions set opposite to their names with regularity to the tax-dárogha or other person appointed by the Magistrate to receive the same† (*if the tax is to be collected quarterly, the months in which the payment is to be made must be specified*), or in default thereof, any arrear that may be due will be realized by distraint and sale of the personal effects of the defaulter, or of any goods and chattels which may be found on the premises in respect of which such defaulter is assessed (*or* rated), and such other proceedings adopted for the recovery of the same as are allowed by law.

Dated this day of .

Magistrate of .

* See s. 18, *supra*, p. 183.

† Here certain words, repealed by Act XXII. of 1871, s. 5, have been omitted.

APPENDIX D.

1	2	3	4	5	6	7	8	9	10	11
District.	Names of defaulters.	Amount of defalcation.	Amount, cost, or penalty.	Inventory of property seized under distress.	Date of distress.	Date of sale.	Property sold.	Amount realized on each article.	Purchaser's name.	Balance.

APPENDIX E.

Table of Fees payable in Distraints under this Act.

Sum distrained for	Fee.	
	Rs.	As.
Under 1 rupee	0	4
1 and under 3 rupees	0	8
3 „ 5 „	1	0
5 „ 10 „	1	8
10 „ 15 „	2	0
15 „ 20 „	2	8
20 „ 25 „	3	0
25 „ 30 „	3	8
30 „ 35 „	4	0
35 „ 40 „	4	8
40 „ 45 „	5	0
45 „ 50 „	5	8
50 „ 60 „	6	0
60 „ 80 „	7	8
80 „ 100 „	9	0
Above 100 „	10	0

The above charge includes all expenses, except when peons are kept in charge of property distrained, in which case three annas must be paid daily for each man.

Act XXII. of 1856.

ACT XXII. OF 1856.

RECEIVED THE G.-G.'S ASSENT ON THE 5TH DECEMBER 1856.

*An Act for establishing a toll on boats and timber passing through the Karatoyá river in the district of Bogra.**

Preamble.

WHEREAS it is expedient, with a view to afford facilities for the internal commerce of the districts of Dinájpur, Rangpur, and Bogra, to adopt measures for the improvement of the navigation of that part of the Karatoyá river which lies within the district of Bogra, and whereas any measure which may be adopted for this purpose will necessarily occasion a considerable outlay at the first, and an annual expense thereafter, and it is just and reasonable that, to defray the same, a moderate toll should be levied on all boats, timber, rafts, and floats passing through or within such part of the said river; and whereas it is expedient to encourage individual enterprise, and the employment of private capital on works of public utility; It is enacted as follows:—

Tolls may be levied on Karatoyá.

1. Tolls, at the rates specified in the schedule annexed to this Act, may be levied on all boats, timber, rafts, and floats, passing through or within the aforesaid part of the Karatoyá river, at such stations or places as the Lieutenant-Governor of Bengal may from time to time appoint.

The said tolls shall be levied by such persons, and under such rules, as the said Lieutenant-Governor may direct; and all such rules shall be duly notified in the English and vernacular gazettes for public information.

But not till measures taken for improving navigation.

2. Provided that no such toll shall be levied until the Lieutenant-Governor of Bengal shall be satisfied, by the report of a competent person, that effective measures have been taken to render the passage through the said part of the Karatoyá river navigable throughout the year.

Provided also that the levy of the said tolls shall be continued only so long as the passage is kept so navigable.

Boats, &c., may be detained and sold for non-payment of toll.

3. Any person duly appointed or authorized to collect the said tolls may detain any boat, timber, raft, or float, for which the toll chargeable under this Act is not paid; and, on the report of such person, which report shall be made within twenty-four hours, the Deputy Collector of Bogra or other public officer duly authorized by Government in that behalf may publish a notice appointing a day for the sale of the same.

At or after the time appointed by the notice, which shall not be less than fifteen days from the date of the publication thereof, if the toll be not paid, or sufficient cause for non-payment be not shown to the satisfaction of the Deputy Collector or other officer as aforesaid, such officer may sell the thing detained, or, in the case of a boat, such part of the tackle or lading thereof, or in the case of a raft or float, such part of the same, as may be necessary for the recovery of the toll, and shall pay the overplus, if any, to the owner on demand.

Penalty for unlawful detention.

4. Any person who, under colour of this Act, shall unlawfully detain any boat, timber, raft, or float, or shall neglect, or without lawful excuse delay, to report the detention of any

* Properly Bagurá.

boat, timber, raft, or float, to the Deputy Collector or other officer as aforesaid, or shall demand or receive as toll any larger sum than is authorized by the schedule annexed to this Act, shall, on conviction before a Magistrate, or other officer exercising the powers of a Magistrate, forfeit a sum not exceeding two hundred rupees. Act XXII. of 1856.

Government may authorize person to carry out objects of Act.

5. For the purpose of carrying out the objects of this Act, the Lieutenant-Governor of Bengal may authorize any public officer to cut any canal, clear and deepen any channel, stop any watercourse, or take any other measures which may be judged necessary for making the river navigable as aforesaid, or may grant the like authority to any private person who may undertake to carry out those objects at his own expense; and may take possession, as for a public purpose, of any land that may be necessary for the execution of any of the above-mentioned works, under the provisions of* any Act that may hereafter be in force for taking possession of land for public purposes,† whether the said works are to be executed at the expense of Government, or of such private person as aforesaid.

And may make grant of tolls.

6. If the Lieutenant-Governor shall grant authority to any private person to carry out the objects of this Act at his own expense, he may also make a grant of the said tolls to such person upon such conditions and for such a term as to the said Lieutenant-Governor shall appear just and proper, and may authorize such person, or any person or persons employed by him, to collect the said tolls.

SCHEDULE

Of tolls chargeable on boats, timbers, rafts and floats passing into or through the Karatoyá river within the district of Bogra.

Bajrás, bhaunliyás, and other boats for personal accommodation	... 4 annas per oar.
Boats of burthen, empty...	... At the rate of two annas per 100 mds. burthen.
Ditto ditto laden with bricks, tiles, and earthenware; straw, grass, reeds, and fire-wood; fruit and vegetables	... At the rate of four annas per 100 mds. burthen.
Ditto ditto with grain, pulse, seeds, and any other article not expressly enumerated	... At the rate of twelve annas per 100 mds. burthen.

Timbers in rafts or otherwise not being in boats, two annas each timber.

Bamboos in floats, four annas per 100 bamboos.

Every boat less than 50 maunds burthen shall be rated as 25 maunds—every boat of 50 maunds and less than 75 maunds shall be rated as 50 maunds—every boat of 75 maunds and less than 100 maunds shall be rated as 75 maunds—every boat of 100 maunds and less than 125 maunds shall be rated as 100 maunds, and so on.

Any number of bamboos less than an even hundred shall be rated as 100.

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* Here certain words, repealed by Act XII. of 1891, Sch. I., have been omitted.

† Act X. of 1870.

Act II. of 1857.

ACT II. OF 1857.

RECEIVED THE G.-G.'S ASSENT ON THE 24TH JANUARY 1857.

An Act to establish and incorporate an University at Calcutta.

WHEREAS, for the better encouragement of Her Majesty's subjects of all classes and denominations within the Presidency of Fort William in Bengal and other parts of India in the pursuit of a regular and liberal course of education, it has been determined to establish an University at Calcutta for the purpose of ascertaining, by means of examination, the persons who have acquired proficiency in different branches of Literature, Science, and Art, and of rewarding them by academical degrees as evidence of their respective attainments, and marks of honour proportioned thereunto; and whereas, for effectuating the purposes aforesaid, it is expedient that such University should be incorporated; It is enacted as follows :*—

Preamble.

Incorporation.

1. The following persons, namely,

The Right Honourable Charles John Viscount Canning, Governor-General of India ;

The Honourable John Russell Colvin, Lieutenant-Governor of the North-Western Provinces ;

The Honourable Frederick James Haliday, Lieutenant-Governor of Bengal ;

The Honourable Sir James William Colvile, Knight, Chief Justice of the Supreme Court of Judicature in Bengal ;

The Right Reverend Daniel Wilson, Doctor of Divinity, Bishop of Calcutta ;

The Honourable George Anson, General, Commander-in-Chief of the Forces in India ;

The Honourable Joseph Alexander Dorin, Member of the Supreme Council of India ;

The Honourable John Low, Major-General, Companion of the Most Honourable Order of the Bath, Member of the Supreme Council of India ;

The Honourable John Peter Grant, Member of the Supreme Council of India ;

The Honourable Barnes Peacock, Member of the Supreme Council of India ;

Charles Allen, Esquire, Member of the Legislative Council of India ;

Henry Ricketts, Esquire, Provisional Member of the Supreme Council of India ;

Charles Binny Trevor, Esquire, Judge of the Sadr Court in Bengal.

Prince Gholam Muhammad.

William Ritchie, Esquire, Advocate-General in Bengal.

Cecil Beadon, Esquire, Secretary to the Government of India ;

* The words, "that is to say," in the preamble, repealed by Act XII. of 1876, s. 1, have here been omitted.

Act II. of 1857.

Colonel Henry Goodwyn, of the Bengal Engineers, Chief Engineer in Bengal;

William Gordon Young, Esquire, Director of Public Instruction in Bengal;

Lieutenant-Colonel William Erskinè Baker, of the Bengal Engineers, Secretary to the Government of India;

Lieutenant-Colonel Andrew Scott Waugh, of the Bengal Engineers, Surveyor-General of India;

Kenneth Mackinnon, Esquire, Doctor in Medicine;

Hodgson Pratt, Esquire, Inspector of Schools in Bengal;

Henry Walker, Esquire, Professor of Anatomy and Physiology in the Medical College of Bengal;

Thomas Thompson, Esquire, Doctor in Medicine, Superintendent of the Botanical Garden at Calcutta;

Frederick John Mouat, Esquire, Doctor in Medicine, and Fellow of the Royal College of Surgeons;

Lieutenant William Nassau Lees, of the Bengal Infantry;

The Reverend William Kay, Doctor of Divinity, Principal of Bishop's College;

The Reverend Alexander Duff, Doctor of Divinity;

Thomas Oldham, Esquire, Superintendent of the Geological Survey of India;

Henry Woodrow, Esquire, Inspector of Schools in Bengal;

Leonidas Clint, Esquire, Principal of the Presidency College;

Prosonno Kumar Tagore, Clerk Assistant of the Legislative Council of India;

Ramapershad Roy, Government Pleader in the Sadr Court of Bengal;

The Reverend James Ogilvie, Master of Arts;

The Reverend Joseph Mullens, Bachelor of Arts;

Maulvi Muhammad Wujeeh, Principal of the Calcutta Mudrasah;

Ishwar Chandra Bidya Sagar, Principal of the Sanskrit College of Calcutta;

Ramgopal Ghose, Formerly Member of the Council of Education;

Alexander Grant, Esquire, Apothecary to the East India Company;

Henry Stewart Reid, Esquire, Director of Public Instruction in the North-Western Provinces,

being the first Chancellor, Vice-Chancellor, and Fellows of the said University, and all the persons who may hereafter become or be appointed to be Chancellor, Vice-Chancellor, or Fellows as hereinafter mentioned, so long as they shall continue to be such Chancellor, Vice-Chancellor, or Fellows, are hereby constituted and declared to be one Body, Politic and Corporate, by the name of the University of Calcutta; and such Body Politic shall by such name have perpetual succession, and shall have a common seal, and by such name shall sue and be sued, implead and be impleaded, and answer and be answered unto, in every Court of Justice within the territories "under the Government of India."*

* Here the words, "under the Government of India," have been substituted for the words "in the possession and under the government of the East India Company," by Act XII. of 1891, Sch. I.

Act II. of 1857.

Power to hold and dispose of property.

2. The said Body Corporate shall be able and capable in law to take, purchase, and hold any property, moveable or immoveable, which may become vested in it for the purposes of the said University by virtue of any purchase, grant, testamentary disposition, or otherwise; and shall be able and capable in law to grant, demise, alien, or otherwise dispose of, all or any of the property, moveable or immoveable, belonging to the said University; and also to do all other matters incidental or appertaining to a Body Corporate.

Constitution of Body Corporate.

Senate.

Office vacated by leaving India.

3. The said Body Corporate shall consist of one Chancellor, one Vice-Chancellor, and such number of *ex-officio* and other Fellows as the Governor-General of India in Council hath already appointed, or shall from time to time, by any order published in the *Calcutta Gazette*, hereafter appoint; and the Chancellor, Vice-Chancellor, and Fellows for the time being shall constitute the Senate of the said University. Provided that, if any person, being Chancellor, Vice-Chancellor, or Fellow of the said University, shall leave India without the intention or returning thereto, his office shall thereupon become vacant.

Chancellor.

4. The Governor-General of India for the time being shall be the Chancellor of the said University.*

Vice-Chancellor.

5. The office of Vice-Chancellor shall be held for two years only. Whenever a vacancy shall occur in the office of Vice-Chancellor of the said University by death, resignation, departure from India, effluxion of time, or otherwise, the Governor-General of India in Council shall, by notification in the *Calcutta Gazette*, nominate a fit and proper person, being one of the Fellows of the said University, to be Vice-Chancellor in the room of the person occasioning such vacancy. Provided that, on any vacancy in the said office which shall occur by effluxion of time, the Governor-General of India in Council shall have power to re-appoint any future Vice-Chancellor to such office.*

Fellows.

6. The Lieutenant-Governors of Bengal and the North-Western Provinces, the Chief Justice of the Supreme Court of Judicature at Fort William in Bengal or of any Court of Judicature hereafter to be constituted, to or in which the powers of the said Supreme Court may be transferred or vested, the Bishop of Calcutta, and the Members of the Supreme Council of India, all for the time being, shall be *ex-officio* Fellows of the said University.

The whole number of the Fellows of the said University, exclusive of the Chancellor and Vice-Chancellor for the time being, shall never be less than thirty; and, whenever the number of the said Fellows, exclusive as aforesaid, shall, by death, resignation, departure from India, or otherwise, be reduced below thirty, the Governor-General of India in Council shall forthwith, by notification in the *Calcutta Gazette*, nominate so many fit and proper persons to be Fellows of the said University as, with the then Fellows of the said University, shall make the number of such Fellows, exclusive as aforesaid, thirty. But nothing herein contained shall prevent the Governor-General of India in Council from nominating more than thirty persons to be Fellows of the said University if he shall see fit.

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* Certain words in ss. 4 and 5, repealed by Act XII. of 1876, s. 1, have been omitted.

Act II. of 1857.

7. The Governor-General of India in Council may cancel the appointment of any person already appointed, or hereafter to be appointed, a Fellow of the University; and as soon as such order is notified in the Gazette, the person so appointed shall cease to be a Fellow.

The appointment of a Fellow may be cancelled.

8. The Chancellor, Vice-Chancellor, and Fellows for the time being, shall have the entire management of, and superintendence over, the affairs, concerns, and property of the said University; and, in all cases unprovided for by this Act, it shall be lawful for the Chancellor, Vice-Chancellor, and Fellows to act in such manner as shall appear to them best calculated to promote the purposes intended by the said University.

Chancellor, Vice-Chancellor, and Fellows to superintend the affairs of the University.

The said Chancellor, Vice-Chancellor, and Fellows shall have full power from time to time to make and alter any bye-laws and regulations (so as the same be not repugnant to law, or to the general objects and provisions of this Act) touching the examination for degrees and the granting of the same; and touching the examination for honours and the granting of marks of honour for a higher proficiency in the different branches of Literature, Science, and Art; and touching the qualifications of the candidates for degrees and the previous course of instruction to be followed by them, and the preliminary examinations to be submitted to by them; and touching the mode and time of convening the meetings of the Chancellor, Vice-Chancellor, and Fellows; and, in general, touching all other matters whatever regarding the said University. And all such bye-laws and regulations, when reduced into writing, and after the common seal of the said University shall have been affixed thereto, shall be binding upon all persons, members of the said University, and all candidates for degrees to be conferred by the same, provided such bye-laws and regulations shall have been first submitted to, and shall have received the approval of, the Governor-General of India in Council.

Bye-laws.

9. All questions which shall come before the Chancellor, Vice-Chancellor, and Fellows shall be decided at a meeting of the Senate by the majority of the members present; and the Chairman at any such meeting shall have a vote, and, in case of an equality of votes, a second or casting vote.

Meetings of the Senate.

No question shall be decided at any meeting, unless the Chancellor, or Vice-Chancellor, and five Fellows, or, in the absence of the Chancellor and Vice-Chancellor, unless six Fellows at the least, shall be present at the time of the decision.

At every meeting of the Senate, the Chancellor, or in his absence the Vice-Chancellor, shall preside as Chairman; and, in the absence of both, a Chairman shall be chosen by the Fellows present, or the major part of them.

10. The said Chancellor, Vice-Chancellor, and Fellows for the time being shall have full power from time to time to appoint, and, as they shall see occasion, to remove, all examiners, officers, and servants of the said University.

Appointment and removal of examiners and officers.

11. The said Chancellor, Vice-Chancellor, and Fellows shall have power, after examination, to confer the several degrees of Bachelor of Arts, Master of Arts, Bachelor of Laws, Licentiate of Medicine, Doctor of Medicine, and Master of Civil Engineering: they shall also have power, after examination, to confer upon the

Power to confer degrees.

Act II. of 1857.

candidates for the said several degrees, marks of honour for high degree of proficiency in the different branches of Literature, Science, and Art, according to rules to be determined by the bye-laws to be from time to time made by them under the power in that behalf given to them by this Act.*

Qualification for admission of candidates for degrees.

12. Except by special order of the Senate, no person shall be admitted as a candidate for the degree of Bachelor of Arts, Master of Arts, Bachelor of Laws, Licentiate of Medicine Doctor of Medicine, or Master of Civil Engineering, unless he shall present to the said Chancellor, Vice-Chancellor, and Fellows a certificate, from one of the institutions authorized in that behalf by the Governor-General of India in Council, to the effect that he has completed the course of instruction prescribed by the Chancellor, Vice-Chancellor, and Fellows of the said University in the bye-laws to be made by them under the power in that behalf given by this Act.

Examination for degrees.

13. The said Chancellor, Vice-Chancellor, and Fellows shall cause an examination for degrees to be held at least once in every year; on every such examination, the candidates shall be examined, either by examiners appointed for the purpose from among the Fellows by the said Chancellor, Vice-Chancellor, and Fellows, or by other examiners so to be appointed; and, on every such examination, the candidates, whether candidates for an ordinary degree or for a degree with honours, shall be examined on as many subjects and in such manner as the said Chancellor, Vice-Chancellor, and Fellows shall appoint.

Grant of degrees.

14. At the conclusion of every examination of the candidates, the examiners shall declare the name of every candidate whom they shall have deemed entitled to any of the said degrees, and his proficiency in relation to other candidates; and also the honours which he may have gained in respect of his proficiency in that department of knowledge in which he is about to graduate: and he shall receive from the said Chancellor a certificate, under the seal of the said University of Calcutta, and signed by the said Chancellor or Vice-Chancellor, in which the particulars so stated shall be declared.

Fees.

15. The said Chancellor, Vice-Chancellor, and Fellows shall have power to charge such reasonable fees for the degrees to be conferred by them, and upon admission into the said University, and for continuance therein, as they, with the approbation of the Governor-General in Council, shall, from time to time, see fit to impose. Such fees shall be carried to one General Fee Fund for the payment of expenses of the said University, under the directions and regulations of the Governor-General of India in Council, to whom the accounts of income and expenditure of the said University shall once in every year be submitted for such examination and audit as the said Governor-General of India in Council may direct.

Annual accounts.

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* As to power of conferring degrees, see also Acts XLVII. of 1860 and I. of 1884.

ACT IV. OF 1857.

Act IV. of 1857.

RECEIVED THE G.-G.'S ASSENT ON THE 9TH FEBRUARY 1857.

An Act to amend the law relating to the duties payable on tobacco, and the retail-sale and warehousing thereof in the town of Bombay.

Preamble.

WHEREAS it is expedient to amend the law relating to the duties payable on tobacco and the retail-sale and warehousing of that article in the town of Bombay; It is hereby enacted as follows:—

1. [*Repealed by Act XIV. of 1870.*]

Municipal duty on tobacco for consumption in Bombay.

2. All tobacco (except such small quantities as are hereinafter mentioned) imported from any place into the town of Bombay, and intended for consumption therein, shall be liable to a duty of seven rupees and eight annas per maund of forty sers of eighty tolas to the ser, which duty is hereinafter called the municipal duty.*

Municipal duty when payable.

3. The said municipal duty may be paid, at the option of the importer, either on the importation of the tobacco, or after it has been warehoused as hereinafter provided.

Duty not paid on importation to be paid on removal from warehouse for consumption.

4. If the said municipal duty is not paid on importation, the tobacco shall be warehoused in a public or licensed warehouse; and the importer shall pay such duty on the said tobacco on its removal from the werehouse for consumption in the said town.

Remission of duty on re-exportation.

When tobacco so warehoused is re-exported to any place beyond the limits of the said town, the whole of the said municipal duty shall be remitted.

Bombay a warehousing port for tobacco.

5. The port of Bombay shall be held to be a warehousing port, so far as regards the warehousing of tobacco.*

Powers for collection and enforcing payment of duty.

6. The Commissioner of Customs, Salt, and Opium, and officers of customs, shall have all the same powers and authorities for collecting and enforcing payment of the said municipal duty, in addition to the powers and authorities specified in this Act, as they now have or shall have in respect of duties of customs.

Tobacco not to be imported otherwise than by sea.

Landing-places to be prescribed.

7. It shall not be lawful, without the permission of the Commissioner of Customs, Salt, and Opium, or other officer empowered by Government to grant such permission, to bring any tobacco or any preparation thereof into Bombay otherwise than by sea, nor to land the same at any other landing-places than such as may from time to time be prescribed by the Government of Bombay.

Exemption from duty.

8. The foregoing provisions of this Act shall not be applicable to such small quantities of tobacco (not exceeding in weight four sers of eighty tolas to the ser) as are intended for the private consumption of the importer.

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* Here certain words, repealed by Act XII. of 1891, Sch. I., have been omitted.

Act IV. of 1857.

Permit necessary for removal of tobacco.

9. It shall not be lawful to remove any tobacco from one place to another within the said town, nor to carry or convey the same on any thoroughfare in the said town, nor to carry the same in any vessel or boat of less than forty khandís burthen in any of the creeks or waters adjacent to the said town, without a permit from the Commissioner of Customs, Salt, and Opium, which permit shall be in the form of Schedule A to this Act annexed, or to the like effect;

any such permit shall be in force only between sunrise and sunset of the day for which it is granted:

Proviso.

Provided always that it shall be lawful to convey without a permit any tobacco so far as may be necessary for the lawful importation thereof according to the provisions of this Act, and also small quantities of tobacco, not exceeding in weight four sers of eighty tolas to the ser, for personal or domestic use.

No permit for removal from warehouse of less than bale.

10. No permit shall be granted for the removal from warehouse of any quantity of tobacco less than an entire bale or package:

Proviso.

Provided that, when tobacco is to be removed for consumption in the said town, the Commissioner of Customs, Salt, and Opium, may give permission to open any bale or package previous to removal, and to set aside such portion thereof as may be refuse or waste; and the said refuse or waste may be re-exported, under the rules for the re-export of tobacco, at any time within one month from the date of such permission, or, if it be not so re-exported, may be destroyed by order of the Commissioner.

License for retail-sale of tobacco.

11. It shall not be lawful for any person to sell or offer for sale by retail any tobacco in the said town without a license from the Commissioner of Customs, Salt, and Opium, or other officer duly empowered by Government in that behalf, which license shall be in force for a period of twelve calendar months from the date thereof, unless the person to whom the license is granted shall be deprived thereof under the provisions of this Act.

A fee of one rupee shall be paid for every such license.

What to be deemed retail-sale.

12. Any sale of tobacco not exceeding in weight fourteen sers of eighty tolas to the ser shall be deemed to be a retail-sale within the meaning of this Act.

Retail-sale to be only at place mentioned in license.

13. It shall not be lawful for any licensed retail-dealer in tobacco to carry on the retail-sale of the same, or to keep any store of the same, except at such shop or other premises as may be specified in his license; and the name of every retail-dealer in tobacco, together with the number of his license, shall be written or painted in English,

Name and number to be affixed to shop.

Guzráti, and Mahráthí, in plain and legible characters of not less than one inch in height, on a board to be affixed in a conspicuous manner in the front of the shop or premises where such retail-sale is carried on.

Monthly returns of stock to be made by retail-dealers.

14. Every retail-dealer in tobacco shall, on or before the tenth day of each month, make to the Commissioner of Customs, Salt, and Opium, or other officer as aforesaid, a separate return for each shop or place of sale for which he holds a license, showing the quantity of tobacco on hand therein at the beginning of the preceding

month, the quantity received during such month, and the persons from whom, and the dates on which, he received it, and the stock remaining at the close of such month;

and any retail-dealer who refuses or neglects to make such return, or makes a false return, shall be liable to be deprived of his license by the said Commissioner or other officer as aforesaid, and to pay a fine not exceeding two hundred rupees.

Retail-dealer to enter in book, weight, &c., of tobacco received.

15. Every retail-dealer in tobacco shall, on the same day on which he shall receive any tobacco into any such shop or place of sale, enter, in a book to be kept for that purpose, the weight of such tobacco, the day on which he receives the same, and the name of the person from whom, and the place from which, he receives it;

Inspection of book.

and such book shall be open to the inspection of the Commissioner of Customs, Salt, and Opium, or other officer as aforesaid, or of any person authorized by the Commissioner or such officer to inspect the same;

and the Commissioner or other officer or person as aforesaid inspecting the said book may make any minute therein, or any extract therefrom, which he shall think fit;

and any retail-dealer who neglects or refuses to comply with the provisions of this section shall, for every offence, be liable to be deprived of his license by the said Commissioner or other officer as aforesaid, and to pay a fine not exceeding two hundred rupees.

Search-warrant.

16. The Commissioner of Customs, Salt, and Opium, or other officer as aforesaid, may issue a warrant under his hand and seal to any public officer, commanding him to enter and search, between sunrise and sunset, any building or place to be specified in the warrant, in which tobacco may be deposited under the provisions of this Act, or in which the Commissioner or other officer as aforesaid has been credibly informed, which information shall be taken down in writing, that tobacco is deposited contrary to the provisions of this Act, and to seize and take away from thence any tobacco or other articles subject to confiscation under this Act.

Power to arrest and detain.

17. The Commissioner of Customs, Salt, and Opium, or other officer as aforesaid, or any public officer authorized by the Commissioner or such officer, may arrest and detain any person carrying or having charge of any tobacco liable to confiscation under this Act, and may detain and search any vessel or package, and any boat or vehicle, containing or conveying, or supposed to contain or convey, any such tobacco.

To search vehicles, &c.

Confiscation of tobacco illegally imported, removed, &c.

18. All tobacco imported into the said town, or removed from one place to another, or kept within the said town, or found in the possession of any person in the said town, selling or offering any portion thereof for sale, contrary to the provisions of this Act, and every vessel in which such tobacco is contained, and every vehicle, boat, or animal, employed with the consent and knowledge of the owner or his servant in conveying the same, shall be liable to confiscation:

Provided always that it shall be lawful for the adjudicating officer to mitigate the penalty of confiscation herein provided, by commuting the same to the payment of any fine not

Mitigation of penalty.

Act V. of 1857.

exceeding the value of the goods liable to confiscation ; and every such fine may be enforced, if necessary, by the sale of the goods liable to confiscation.

Penalty for illegal importation, removal, sale, or possession.

19. Any person who shall illegally import, remove, or sell in the said town, any tobacco, or who shall knowingly have in his possession any tobacco, subject to confiscation under this Act, shall be liable to a fine not exceeding ten times the value of such tobacco; and if the offender is a licensed retail-dealer, he shall be liable to be deprived of his license by the Commissioner of Customs, Salt, and Opium, or other officer as aforesaid.

Revocation of license.

Levy of fines and adjudication and sale of confiscations.

20. All confiscations and fines under this Act may be adjudicated and levied by any Magistrate of Police for the town of Bombay.

Goods adjudged liable to confiscation shall be sold under warrant of the Magistrate.

Interpretation.

21. The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the context repugnant to such construction:—

the words "town of Bombay" shall include all places within the islands of Bombay and Kolábá;

words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number;

words importing the masculine gender shall include females.

SCHEDULE A.

Form of Permit.

No.

A. B. has been permitted to remove from (Custom-House *or* licensed warehouse *or* shop No. , situated in Kabadevi Street, to warehouse or shop No. , in Bázár Street) the under-mentioned quantity of tobacco between sunrise and sunset on the day of in the year .

(Signed)————————

Commissioner of Customs, Salt, and Opium.

ACT V. OF 1857.

RECEIVED THE G.-G.'S ASSENT ON THE 13TH FEBRUARY 1857.

An Act to confer certain powers on the Oriental Gas Company, Limited.

Preamble.

WHEREAS a Joint Stock Company has been lately formed for the purpose of introducing gas-works into India, which Company having been completely registered in England under the Act of Parliament of the eighth year of the reign of Her present Majesty, cap. 110, has since been registered in England under "The Joint Stock Companies Act, 1856," with limited liability, and has duly obtained a certificate of incorporation under the name of the Oriental Gas Company, Limited ; and whereas the said Company has erected gasworks on land granted for that pur-

pose by Government in the vicinity of the town of Calcutta, and is engaged in the preparation of apparatus and materials for the manufacture and supply of gas for lighting the said town; and whereas it is expedient that powers and facilities should be given to the said Company to enable them to carry out their undertaking of lighting with gas the said town of Calcutta, which powers and facilities may hereafter be extended to the operations of the said Company in other towns and places; It is enacted as follows:—

Power to break up street, &c., under superintendence, and to open drains.

1. In the town of Calcutta and its environs, and in any other town or place to which the provisions of this Act may hereafter be extended by a law to be passed for that purpose, the Oriental Gas Company, Limited, under such superintendence as is hereinafter specified, may open and break up the soil and pavement of the several streets and bridges, and may open and break up any sewers, drains, or tunnels within or under such streets and bridges, and lay down and place, within the same limits, pipes, conduits, service-pipes, and other works, and from time to time repair, alter, or remove the same, and also make any sewers that may be necessary for carrying off the washings and waste liquids which may arise in the making of the gas; and, for the purposes aforesaid, may remove and use all earth and materials in and under such streets and bridges; and they may, in such streets, erect any pillars, lamps, and other works, and do all other acts which the said Company shall, from time to time, deem necessary for supplying gas to the inhabitants of the said town of Calcutta and its environs, or other town or place as aforesaid, doing as little damage as may be in the execution of the powers hereby granted, and making compensation for any damage which may be done in the execution of such powers.

Company not to enter on private land without consent.

2. Provided always that nothing herein shall authorize or empower the said Company to lay down or place any pipe or other works into, through, or against, any building, or in any land not dedicated to public use, without the consent of the owners and occupiers thereof, except that the said Company may at any time enter upon and lay or place any new pipe in the place of an existing pipe in any land wherein any pipe has been already lawfully laid down or placed in pursuance of this Act, and may repair or alter any pipe so laid down.

Notice to be given in writing of intention to break up street, &c.

3. Before the said Company proceed to open or break up any street, bridge, sewer, drain, or tunnel, they shall give, to the Municipal Commissioners for the town of Calcutta, or other persons under whose control or management the same may be, or to their clerk, surveyor, or other officer, notice in writing of their intention to open or break up the same, not less than three clear days before begin ning such work, except in cases of emergency arising from defects in any of the pipes or other works, and then so soon as is possible after the beginning of the work, or the necessity for the same shall have arisen.

No street or drain to be broken up, except under superintendence, or on failure to superintend.

4. No such street, bridge, sewer, drain, or tunnel, shall, except in the cases of emergency aforesaid, be opened or broken up, except under the superintendence of the persons having the control or management thereof, or of their officer, and according to such plan as shall be approved of by such persons or their officer, or in case of any difference respecting such plan then according to such plan as shall be determined by a Magistrate; and such Magistrate may, on the application of the persons having the

Act V. of 1857.

control or management of any such sewer or drain, or their officer, require the said Company to make such temporary or other works as they may think necessary for guarding against any interruption of the drainage during the execution of any works which interfere with any such sewer or drain: Provided always that, if the persons, having such control or management as aforesaid, and their officer fail to attend at the time fixed for the opening of any such street, bridge, sewer, drain, or tunnel, after having had such notice of the said Company's intention as aforesaid, or shall not propose any plan for breaking up or opening the same, or shall refuse or neglect to superintend the operation, the said Company may perform the work specified in such notice without the superintendence of such persons or their officer.

Streets broken up to be reinstated without delay.

5. When the said Company open or break up the road or pavement of any street or bridge, or any sewer, drain, or tunnel, they shall, with all convenient speed, complete the work for which the same shall be broken up, and fill in the ground, and reinstate and make good the road or pavement, or the sewer, drain, or tunnel so opened or broken up, and carry away the rubbish occasioned thereby; and shall at all times, whilst any such road or pavement shall be so opened or broken up, cause the same to be fenced and guarded, and shall cause a light, sufficient for the warning of passengers, to be set up and maintained, against or near such road or pavement where the same shall be open or broken up, every night during which the same shall be continued open or broken up; and shall keep the road or pavement which has been so broken up in good repair for three months after replacing and making good the same, and for such further time, if any, not being more than twelve months in the whole, as the soil so broken up shall continue to subside.

Penalty for delay in restoring street.

6. If the said Company open or break up any street or bridge, or any sewer, drain, or tunnel, without giving such notice as aforesaid, or in a manner different from that which shall have been approved of or determined as aforesaid, or without making such temporary or other works as aforesaid, when so required, except in the cases in which the said Company are hereby authorized to perform such works without any superintendence or notice; or if the said Company make any delay in completing any such work, or in filling in the ground, or re-instating and making good the road or pavement, or the sewer, drain, or tunnel so opened or broken up, or in carrying away the rubbish occasioned thereby; or if they neglect to cause the place where such road or pavement has been broken up to be fenced, guarded, and lighted, or neglect to keep the road or pavement in repair for the space of three months next after the same shall have been made good, or such further time as aforesaid, they shall forfeit, to the persons having the control or management of the street, bridge, sewer, drain, or tunnel, in respect of which such default is made, a sum not exceeding 50 rupees for every such offence, and they shall forfeit an additional sum, not exceeding 50 rupees, for each day during which any such delay as aforesaid shall continue after they shall have received notice thereof.

In case of delay other parties may reinstate and may recover expenses.

7. If any such delay or omission as aforesaid take place, the persons having the control or management of the street, bridge, sewer, drain, or tunnel, in respect of which such delay or omission shall take place, may cause the work so delayed or omitted to be executed; and the expense of executing the same shall be repaid to such persons by the said Company; and the amount of such expense shall, in case of any dispute about the same, be ascertained and re-

covered in Calcutta and in any other town or place subject to the jurisdiction of any of Her Majesty's Courts of Judicature, in the manner in which expenses are ascertained and recovered under Act XIV. of 1856, and in any town or place not within the jurisdiction of any of Her Majesty's Courts, in the same manner as damages are recoverable under this Act. Act V. of 1857.

Power to enter buildings to ascertain the quantity of gas consumed.

8. The clerk, engineer, or other officer duly appointed for the purpose by the said Company, may, at all reasonable times, enter any buildings or place lighted with gas supplied by the said Company, in order to inspect the meters, fittings, and works for regulating the supply of gas, and for the purpose of ascertaining the quantity of gas consumed or supplied; and if any person hinder such officer as aforesaid from entering and making such inspection as aforesaid at any reasonable time, he shall, for every such offence, forfeit to the said Company a sum not exceeding 50 rupees.

Recovery of rent due for gas.

9. If any person supplied with gas, or any person to whom any meter or fitting shall have been let for hire by the said Company, neglect to pay the rent due for the same to the said Company, the said Company may stop the gas from entering the premises of such person, by cutting off the service-pipes, or by such means as the said Company shall think fit, and recover the rent due from such person, together with the expenses of cutting off the gas, by action in any Court of competent jurisdiction.

Power to take away pipes when supply of gas discontinued.

10. In all cases in which the said Company are authorized to cut off and take away the supply of gas from any house or building or premises under the provisions of this Act, the said Company, their agents, or workmen, after giving twenty-four hours' previous notice to the occupier, may enter into any such house, building, or premises, between the hours of nine in the forenoon, and four in the afternoon, and remove and carry away any pipe, meter, fittings, or other works, the property of the said Company.

Meters not liable to distress for rent, &c.

11. Any meter or fitting let for hire by the said Company shall not be subject to distress for rent or revenue or any rate due upon the premises where the same may be used, nor be taken in execution under any process of a Court of law or equity, or any proceeding in insolvency against the person in whose possession the same may be.

Penalty for fraudulently using gas.

12. Every person who shall lay, or cause to be laid, any pipe to communicate with any pipe belonging to the said Company, without their consent, or shall fraudulently injure any such meter as aforesaid, or who, in case the gas supplied by the said Company is not ascertained by meter, shall use any burner other than such as has been provided or approved of by the said Company, or of larger dimensions than he has contracted to pay for, or shall keep the lights burning for a longer time than he has contracted to pay for, or shall otherwise improperly use or burn the gas, or shall supply any other person with any part of the gas supplied to him by the said Company, shall forfeit to the said Company the sum of 50 rupees for every such offence, and also the sum of 20 rupees for every day such pipe shall so remain, or such works or burner shall be so used, or such excess be so committed or continued, or such supply furnished; and the said Company may take off the gas from the house and premises of the person so offending, notwithstanding any contract which may have been previously entered into.

Act V. of 1857.

Penalty for wilfully damaging pipes.

13. Every person who shall wilfully remove, destroy, or damage any pipe, pillar, post, plug, lamp, or other work of the said Company for supplying gas, or who shall wilfully extinguish any of the public lamps or lights, or waste or improperly use any of the gas supplied by the said Company, shall, for each such offence, forfeit to the said Company any sum not exceeding 50 rupees, in addition to the amount of the damage done.

Satisfaction for accidentally damaging pipes.

14. Every person who shall carelessly or accidentally break, throw down, or damage any pipe, pillar, or lamp belonging to the said Company or under their control, shall pay such sum of money by way of satisfaction to the said Company for the damage done, not exceeding 50 rupees, as any Magistrate shall think reasonable.

Causing water to be corrupted. Daily penalty during the continuance of the offence.

15. If the said Company shall at any time cause or suffer to be brought or to flow into any stream, reservoir, aqueduct, pond, or place for water, or into any drain communicating therewith, any washing or other substance produced in making or supplying gas, or shall wilfully do any act connected with the making or supplying of gas, whereby the water in any such stream, reservoir, aqueduct, pond, or place for water shall be fouled, the said Company shall forfeit, for every such offence, a sum not exceeding 1,000 rupees; and they shall forfeit an additional sum not exceeding 500 rupees for each day during which such washing or other substance shall be brought or shall flow, or the act by which such water shall be fouled shall continue, after the expiration of twenty-four hours from the time when notice of the offence shall have been served on the said Company, by the person into whose water such washing or other substance shall be brought or shall flow, or whose water shall be fouled thereby; and such penalties shall be paid to such last-mentioned person.

Daily penalty during escape of gas after notice.

16. Whenever any gas shall escape from any pipe laid down or set up by or belonging to the said Company, they shall, immediately after receiving notice thereof in writing, prevent such gas from escaping; and in case the said Company shall not, within twenty-four hours next after service of such notice, effectually prevent the gas from escaping, and wholly remove the cause of complaint, they shall, for every such offence, forfeit the sum of 50 rupees for each day during which the gas shall be suffered to escape, after the expiration of twenty-four hours from the service of such notice.

Penalty if water be fouled by gas.

17. Whenever any water shall be fouled by the gas of the said Company, they shall forfeit to the person whose water shall be so fouled for every such offence a sum not exceeding 200 rupees, and a further sum not exceeding 100 rupees for each day during which the offence shall continue, after the expiration of twenty-four hours from the service of notice of such offence.

Power to examine gas-pipes to ascertain cause of water being fouled.

18. For the purpose of ascertaining whether such water be fouled by the gas of the said Company, the person to whom the water supposed to be fouled shall belong may dig up the ground and examine the pipes, conduits, and works of the said Company: Provided that such person, before proceeding so to dig and examine, shall give twenty-four hours' notice in writing to the said Company of the time at which such digging and examination is intended to take place, and shall give the like notice to persons having the control or management of the road, pavement, or place where such digging is to take

place, and they shall be subject to the like obligation of reinstating the said road and pavement, and the same penalties for delay, or any non-feasance or misfeasance therein, as are hereinbefore provided with respect to roads and pavements broken up by the said Company, for the purpose of laying their pipes.

Expenses to abide result of examination.

19. If, upon any such examination, it appear that such water has been fouled by any gas belonging to the said Company, the expenses of the digging, examination, and repair of the street or place disturbed in any such examination, shall be paid by the said Company; but if, upon such examination, it appear that the water has not been fouled by the gas of the said Company, the person causing such examination to be made shall pay all such expenses, and shall also make good to the said Company any injury which may be occasioned to their works by such examination.

How expenses to be ascertained.

20. The amount of the expenses of every such examination and repair, and of any injury done to the said Company, shall, in case of any dispute about the same, together with the costs of ascertaining and recovering the same, be ascertained and recovered in the manner prescribed for the ascertainment and recovery of expenses in section 7 of this Act.

Liability to indictments for nuisance.

21. Nothing in this Act contained shall prevent the said Company from being liable to an indictment for nuisance, or to any other legal proceedings to which they may be liable in consequence of making or supplying gas.

Copies of the original Deed of Association and of all rules, &c., to be kept for inspection at the office of the Company in Calcutta and in one of two other places.

22. A copy of the original Deed of Association of the said Company, and of every other instrument registered under the said "Joint Stock Companies Act, 1856," so constituting the regulations of the said Company, and a copy of every special resolution of a general meeting whereby any change shall have been, or at any time shall be, made in the regulations of the said Company, shall be kept at the office of the said Company in Calcutta, and shall there be open to the inspection of all persons during the usual hours of business of the said office; and a copy of such original Deed of Association, and of every other such instrument, and of every special resolution as aforesaid, shall also be deposited by the said Company as soon as it can be done after the passing of this Act, or after the making of any such special resolution hereafter to be made, in the office of the Registrar of Joint Stock Companies, or, if there be no such officer, in the office of the keeper of the records of the Supreme Court of Judicature at Fort William, and shall there be filed; and an examined copy of any such filed copy as aforesaid, certified by and under the hand of the Registrar of Joint Stock Companies, or of the keeper of the records of the said Supreme Court, shall be good and sufficient evidence of each such original deed, instrument, or special resolution, in all actions, suits, and proceedings whatsoever, whether civil or criminal, to be had in any Court of justice, or before any Magistrate, or Revenue or other officer, and whether acting judicially or in any proceeding preliminary to a judicial inquiry, throughout the territories of the East India Company.

Service of process.

23. All services of mesne or other process, and all notices whatsoever, which, by law or by the practice of any Court wherein the said Company shall sue or be sued, are re-

Act V. of 1857.

quired to be made, served, or given for any purpose whatsoever to the said Company, shall and may be made, served, and given, in addition to all ways and means by which the same may otherwise be legally made, served, and given, by leaving the same, addressed to the Managing Agent of the said Company, at the office in Calcutta of the said Company.

Recovery of penalties, &c.

24. All penalties and forfeitures imposed by this Act, and all damages and expenses, the recovery of which is not specially provided for, may be recovered by summary proceeding before a Magistrate.

Levy by distress.

25. All penalties, forfeitures, damages, and expenses adjudged due under this Act, if the amount be not otherwise paid, may be levied by distress and sale of the goods and chattels of the party liable to pay the same, and the overplus arising from such goods and chattels, after satisfying such amount and the expenses of the distress and sale, shall be returned on demand to the party whose goods shall have been distrained; or instead of proceeding by distress and sale, or in case of failure to realize by distress the whole or any part of any penalties, forfeitures, damages, or expenses imposed or incurred under the provisions of this Act, the person claiming such penalty, forfeiture, damage, or expenses, may sue the person liable to pay the same in any Court of competent jurisdiction.

No distress unlawful for want of form, &c.

26. No distress levied by virtue of this Act shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto; nor shall any such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him; but all persons aggrieved by such irregularity may recover full satisfaction for the special damage in any Court of competent jurisdiction.

Interpretation.

27. The following words and expressions used in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction (that is to say)—

Words importing the singular number only shall include the plural number, and words importing the plural number only shall include also the singular number.

Words importing the masculine gender shall include females.

The word "person" shall include a corporation, whether aggregate or sole.

The word "street" shall include any square, court, or alley, highway, lane, road, thoroughfare, or public passage or place.

The word "Magistrate" shall include any Magistrate of Police, and any Joint-Magistrate or other person lawfully exercising the powers of a Magistrate, acting at, or for, the place or district where the matter requiring the cognizance of any such Magistrate arises.

ACT VII. OF 1857.*

RECEIVED THE G.-G.'S ASSENT ON THE 1ST MAY 1857.

An Act for the more extensive employment of Uncovenanted Agency in the Revenue and Judicial Departments in the Presidency of Fort Saint George.

Preamble.

WHEREAS the exigencies of the public service require the more extended employment of uncovenanted officers in the Revenue and Judicial Departments in the Presidency of Fort Saint George; It is hereby enacted as follows :—

Power to appoint uncovenanted officers.

1. The Governor of Fort Saint George in Council may appoint, in any zila or district within the said Presidency, one or more uncovenanted Deputy Collectors with the powers hereinafter mentioned.

2. [*Repealed by Act X. of 1873.*]

Duties and powers of Deputy Collector.

3. A Deputy Collector appointed under this Act may, within the district to which he is appointed, perform such of the duties and exercise such of the powers of a covenanted Assistant Collector as shall be assigned to him from time to time by the Collector of such district, and shall be subject to the same control in all respects as a covenanted Assistant Collector is subject to.

4. [*Repealed by Act XVII. of 1862.*]

One officer may hold both offices.

5. Nothing in this Act contained shall be held to disqualify any uncovenanted officer appointed under this Act from holding at the same time the offices of Deputy Collector and Deputy Magistrate.

Rules regarding dismissal of Deputy Collectors.

6. A Deputy Collector appointed under this Act shall not be dismissed from office without the sanction of the Governor in Council. Whenever there may be reason to believe that a Deputy Collector is disqualified by neglect, incapacity, or corruption for continuance in office, a report shall be submitted by the Collector or Magistrate through the proper channel for the consideration and orders of the Governor in Council, who shall be competent to suspend such Deputy Collector, and order a further enquiry into his conduct, or to direct his immediate dismissal, as may appear just and proper.

ACT X. OF 1857.†

RECEIVED THE G.-G.'S ASSENT ON THE 20TH MAY 1857.

An Act to amend Act XXXVII. of 1855.

Preamble.

WHEREAS by Act XXXVII. of 1855† certain districts described in the schedule to the said Act were removed from the operation of the general Regulations and Acts; and

* Act VII. of 1857 has been repealed, so far as it relates to Deputy Magistrates, by Act XII. of 1873. It has been declared to apply to the whole of the Madras Presidency, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 4.

† Acts X. of 1857 and XXXVII. of 1855 will be repealed by Act XIV. of 1874 when that Act is brought into force in the Santál Parganas.

Act XI. of 1857.

whereas it is expedient to make certain alterations in respect to the districts so removed; It is enacted as follows:—

Districts removed from operation of general Regulations and Acts.

*All the provisions of the said Act, which are applicable to the districts described in the said schedule, shall, after the passing of this Act, be applicable only to the districts described in the schedule to this Act, in the same manner as if the schedule to this Act had been the schedule to Act XXXVII. of 1855.†

SCHEDULE.

[See *supra*, p. 158.]

ACT XI. OF 1857.‡

RECEIVED THE G.-G.'s ASSENT ON THE 30TH MAY 1857.

An Act for the prevention, trial, and punishment of offences against the State.

Preamble.

WHEREAS it is necessary to make due provision for the prevention, trial, and punishment of offences against the State; It is enacted as follows:—

1, 2. [*Repealed by Act XVII. of 1862.*]

*The rest of s. 1, which has been repealed by Act XIV. of 1870, s. 1, has been omitted.

† Acts X. of 1857 and XXXVII. of 1855 will be repealed by Act XIV. of 1874, when that Act is brought into force in the Santál Parganas.

‡ Act XI. of 1857 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh	See	*Gazette of India*. Dec. 4, 1880, Pt. I., p. 672.
West Jalpaiguri and the Western Dvárs	Ditto	. Mar. 5, 1881, Pt. I., p. 74.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	. Oct. 22, 1881, Pt. I., p. 504.
The Jhánsí Division	Ditto	. Aug. 31, 1878, Pt. I., p. 546.
Kumáon and Garhwál	Ditto	. Nov. 4, 1876, Pt. I., p. 605.
The scheduled portion of the Mirzápur District	Ditto	. May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	. May 31, 1879, Pt. I., p. 382.
The Districts of Hazára, Peshávar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán	Ditto	. Jan. 30, 1881, Pt. I., p. 48.
The District of Lahaul	Ditto	. May 1, 1886, Pt. I., p. 301.
The Scheduled Districts of the Central Provinces	Ditto	. Dec. 13, 1879, Pt. I., p. 771
The District of Silhat	Ditto	. Oct. 4, 1879, Pt. I., p. 631.

It has been extended, under the same Act, to the North-Western Provinces Tarái.—See *Gazette of India*, Sep. 23, 1876, Pt. I., p. 505.

3. *Clause 1.*—Whenever the Executive Government of any Presidency or place* shall proclaim that any district subject to its government is or has been in a state of rebellion,† it shall be lawful for such Government to issue a commission for the trial of all persons who shall be charged with having committed within such district, after a day to be specified in the commission, any* crime against the State, or murder, arson, robbery, or other heinous crime against person or property.

Executive Government may issue a commission for the trial of persons charged with certain offences in any proclaimed district.

Clause 2.—The Commissioner or Commissioners authorized by any such commission may hold a Court in any part of the said district mentioned in the commission, and may there try any person for any of the said crimes committed within any part thereof; it being the intention of this Act that the district mentioned in the commission shall, for the purpose of trial and punishment of any of the said offences, be deemed one district.

Court may be held in any part of the district.

4. It shall be lawful for the Executive Government, by such commission, to direct that any Court held under the Commissioner shall have power, without* the assistance of assessors, to pass upon every person convicted before the Court of any of the aforesaid crimes any sentence warranted by law for such crime; and that the judgment of such Court shall be final and conclusive; and that the said Court shall not be subordinate to the Sadr Court.

Government may vest certain powers in the Court.

5. If a commission be issued under the authority of this Act, any Magistrate within the district which is described in the commission may commit persons charged with any of the aforesaid crimes within such district for trial before a Court to be held under this Act.

Magistrate may commit for trial before Court held under this Act.

6. Nothing in this Act shall extend to the trial or punishment of any of Her Majesty's natural-born subjects born in Europe, or of the children of such subjects.

Act not to apply to British-born subjects or their children.

7 to **10.** [*Repealed by Act XII. of 1876.*]

11. The word "Magistrate" in this Act shall include any person* specially authorized by the Executive Government to exercise the powers vested in a Magistrate by this Act.

Interpretation-clause.

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* Certain words, repealed by Act XII. of 1876, have here been omitted.

† That is, a disturbed district, "in which any great interval between conviction and punishment must deprive the punishment of its due effect."—Mr. Peacock's Statement of Objects and Reasons.

Act XIII. of 1857.

ACT XIII. OF 1857.*

RECEIVED THE G.-G.'S ASSENT ON THE 6TH JUNE 1857.

An Act to consolidate and amend the law relating to the cultivation of the poppy and the manufacture of opium in the Presidency of Fort William in Bengal, "and the territories under the administration of the Chief Commissioner of Oudh."†

Preamble.

WHEREAS the existing law relating to the cultivation of the poppy and the manufacture of opium on account of Government is in some respects inconsistent with the practice which now obtains under agreement between the Opium Agents and the cultivators, and it is expedient that such inconsistency should be removed; and whereas it is also expedient‡ that the laws for preventing the illicit cultivation of the poppy, and for regulating the cultivation of the poppy and the manufacture of opium on account of Government, should be consolidated and amended; It is enacted as follows:—

1. [*Repealed by Act XIV. of 1870.*]

2. [*Repealed by Act I. of 1878.*]

Officers entrusted with superintendence of provision of opium.

3. The superintendence of the provision of opium for Government shall be entrusted to Agents or other officers, being covenanted servants of the Company duly appointed by Government in that behalf, who shall perform the duties connected therewith under the control and direction of the Board of Revenue in Calcutta.

Assistants to Agents.

The Agents or other officers as aforesaid shall be assisted by Deputy Agents and Sub-deputy Agents, or such other officers, covenanted or uncovenanted, as the Government may from time to time appoint for the purpose.

Collector *ex-officio* Deputy Agent.

The Collector of the district shall ordinarily, and unless Government shall otherwise direct, be *ex-officio* Deputy Agent; and the relative duties and powers of the Deputy Agents and Sub-deputy Agents shall be from time to time regulated by the said Board with the sanction of Government.

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* Act XIII. of 1857 has been declared to apply to the whole of Bengal, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 6. It has also been declared in force, by Reg. III. of 1872, s. 3, as amended by Reg. III. of 1886, s. 2, in the Santál Parganas, and, under s. 3 of the Scheduled Districts Act (XIV. of 1874), in West Jalpaiguri, the Districts of Hazáribágh, Lohárdaga, and Mánbhum, Pargana Dhálbhum, and the Kolhán; also in the District of Silhat.

Act XIII. of 1857 has also been declared, by the Laws Local Extent Act (XV. of 1874), s. 7, to be in force in the whole of the N.-W. Provinces except the Scheduled Districts. It has been declared, by notification under the Scheduled Districts Act (XIV. of 1874), to be in force in Kumáon and Garhwál and the scheduled portion of the Mirzápur District, and extended, by notification under the same Act, to the Tarái Parganas.

For declaration as to Act XIII. of 1857 being in force in Oudh, see Act XVIII. of 1876, s. 3 (*e*).

† In the title the words quoted have been inserted by the Oudh Laws Act (XVIII. of 1876), Sch. II.

‡ Here certain words, repealed by Act XII. of 1891, Sch. I., have been omitted.

4. The Opium Agents, and their subordinate officers of every description, are declared amenable to the Civil Courts for all acts done by them in their official capacity, except as otherwise herein provided.

Officers amenable to Civil Courts.

But no suit shall be instituted against an Agent, or any subordinate officer, for any act done in his official capacity, unless the person who shall consider himself aggrieved by the act of such Agent or officer shall have first made application for redress to the Agent himself.

Bar of suit without previous application to Agent for redress.

In the event of such person not being satisfied with the order which the Agent may pass upon his application, it shall then be competent to him either to lay his case by petition before the Board of Revenue, or at once to seek redress in the Civil Court.

5. The Opium Agents shall not, in their official capacity, institute any suit in a Civil Court without the previous sanction of the Board of Revenue.

Sanction to suit by Agent.

6. In cases in which the Board of Revenue may judge it expedient, or in which they may be so directed by Government, they may take upon themselves, or entrust to an officer specially appointed for the purpose, the superintendence of the prosecution or defence of any suit or appeal in which they or an Agent, or any other officer subordinate to them, may be engaged, instead of leaving such superintendence to the Agent or any other officer.

Board may, in certain cases, appoint officer to conduct or defend suits.

7. The Board of Revenue, with the sanction of Government, shall, from time to time, fix the limits within which licenses may be given for the cultivation of the poppy on account of Government.

Board to fix limits of cultivation and price to be paid to cultivators.

With the like sanction they shall, from time to time, fix the price to be paid to the cultivators for the opium produced.

The price shall be fixed at a certain sum per ser of eighty tolas for opium of a certain standard consistence, and shall be subject to a rateable reduction, according to a scale sanctioned by the Board of Revenue, for opium of a consistence below the standard.

8. The Sub-deputy Agents or other officers entrusted with the superintendence of the cultivation shall, at the proper period of the year, issue licenses to the cultivators who may choose to engage to cultivate the poppy and to deliver the produce to the officers of Government at the established rates.

Issue of licenses.

Every license shall specify the number of bíghás which the party engages and is authorized to cultivate, and shall be in such form as the Agent, with the sanction of the Board of Revenue, may direct.

What to be specified in license.

A counterpart-engagement, in conformity with the tenor of the license, shall be taken from the cultivator.

9. It shall be at the option of every cultivator to enter into engagements for the cultivation of the poppy or not as he may think fit; and any Sub-deputy Agent or other officer as aforesaid, or any inferior officer employed in the provision of opium, who shall compel, or use any means to compel, any cultivator to enter into

Cultivator to have option to engage to cultivate or not.

Officers compelling cultivator to engage liable to be dismissed.

Act XIII. of 1857.

engagements, or to receive advances, for the cultivation of the poppy, shall be liable to be dismissed from his situation.

Sub-deputy Agent may withhold license to cultivate.

It shall be at the option of the Sub-deputy Agent or other officer as aforesaid to withhold a license from any cultivator whenever he may think proper so to do.

Appeal.

Any person to whom a license has been refused may appeal to the Agent, and the decision of the Agent shall be final.

Penalty on cultivator receiving advances and not cultivating full quantity of land.

Adjudication of penalty.

10. If it shall be found that any cultivator who has received advances from Government has not cultivated the full quantity of land for which he received such advances, he shall be liable to a penalty of three times the amount of the advances received for the land which he has failed to cultivate; and the said penalty may be adjudged by the Deputy Agent or Collector, on the complaint of the Sub-deputy Agent or other officer as aforesaid.

Appeal.

Any person dissatisfied with the judgment of the Deputy Agent or Collector may appeal to the Agent, and the decision of the Agent shall be final.

Delivery of opium produced.

11. All opium, the produce of land cultivated with poppy on account of Government, shall be delivered by the cultivators to the Sub-deputy Agents or other district-officers, or shall be brought by them to the sadr factory, as the Agent may direct.

Opium not liable to distress or attachment.

Value thereof may be attached.

And no such opium shall be liable to be distrained or attached by a zamíndár or other proprietor, or a farmer of land, for the recovery of arrears of rent, or by any other creditor of a cultivator under any order or decree of Court, but the sum due to the cultivator on account of such opium may be attached by order of Court in the hands of the Agent or of the district-officer under the rules in force for such attachments.

Opium to be weighed and classified by Sub-deputy Agent.

12. All opium delivered by the cultivators to the Sub-deputy Agent or other district-officer shall, before it is forwarded to the sadr factory, be weighed, examined, and classified according to its quality and consistence by that officer, or his assistant if duly authorized by the Agent in that behalf, in the presence of the cultivators and in conformity with rules sanctioned by the Board of Revenue.

Proceeding where cultivator is dissatisfied with classification.

Any cultivator who may be dissatisfied with the classification of the district-officer shall be at liberty either to take his opium to the sadr factory, or to have it forwarded thither by such officer, separate from the opium respecting which no dispute has arisen.

Weighing and examination at sadr factory.

13. All opium forwarded by the district-officers to the sadr factory, and all opium delivered at the sadr factory by the cultivators, shall be there weighed and examined by the Opium Examiner or other officer duly authorized in that behalf, agreeably to rules sanctioned by the Board of Revenue; and the quality and consistence of the opium, and the deductions from, or additions (if any) to, the standard-price to be made in accordance with the said rules, shall be determined by the result of such examination.

The decision of the Examiner, or of the Agent in cases in which a reference to the Agent may be prescribed by the said rules, shall be final and conclusive, and not open to question in any Court. Act XIII. of 1857.

14. When opium delivered by a cultivator, either to a district officer or at the sadr factory, is suspected of being adulterated with any foreign substance, it shall be immediately sealed up pending examination by the Opium Examiner, and notice of such intended examination shall be given to the cultivator.

Confiscation of adulterated opium.

If upon examination the opium shall be found to be so adulterated, the Agent, on the report of the Examiner, may order that it be confiscated, and the order of the Agent shall be final, and not open to question in any Court.

Adjudication of confiscation.

15. The weights and scales made use of in the sadr factories and at the district-kothís shall be provided by the Board of Revenue.

Weights and scales.

Every district-officer shall annually, before beginning to weigh the opium of the season, examine the weight and scales in use in his district, and shall report the result of such examination to the Agent.

Examination thereof.

The Agent shall make a similar examination of the weights and scales of the sadr factory, and shall report the result to the Board.

No weights or scales shall be made use of which on any such examination have not been found to be strictly accurate.

It shall be the duty of all officers who may superintend the weighing of opium to see that the opium is weighed fairly with an even beam, and the practice of taking excess weight for the purpose of turning the scale, or as an allowance for dryage and wastage, is hereby prohibited.

16. The accounts of the cultivators shall be adjusted annually by the district-officers as soon after the conclusion of the weighing and examination as possible; and any balance that may remain due from any cultivator, or from any mahto or intermediate manager, may be recovered by the district-officer by distress and sale of the property of the defaulter or of his surety, in the same manner and under the same rules as the property of defaulting cultivators in estates held khás may be distrained and sold by the Collector for the recovery of an arrear of rent or revenue :

Adjustment of cultivator's accounts, and recovery of balance by distress.

Provided that no warrant of distress and sale shall be issued by any district-officer without the sanction of the Agent previously obtained.

Sanction to issue of warrant.

17. Any officer of the Opium Department who shall receive any fee, gratuity, perquisite, or allowance, either in money or effects, under any pretence whatsoever, from any cultivator or from any other person employed or concerned in the provision of opium, other than the authorized allowances of his situation, shall be dismissed for his office, and, on conviction before a Magistrate, shall be liable to a fine not exceeding five hundred rupees.

Penalty on officer taking bribes.

Act XIII. of 1857.

18. If any zamíndár or other proprietor of land, or any farmer of land, shall exact from any raiyat on account of his poppy-land any illegal cess or any higher rate of rent than he is lawfully entitled to demand, the raiyat, or the Sub-deputy Agent or other district-officer on his behalf, may institute a suit before the Collector, and recover from such proprietor or farmer the sum exacted by him in excess of his lawful demand, together with a penalty of treble the amount of such excess; and such suit shall be tried according to the rules prescribed for suits instituted before a Collector relating to arrears or exactions of rent.

Exactions by landholder from raiyat recoverable, together with penalty in summary suit before Collector.

19. Any cultivator entering into engagements for the cultivation of the poppy on account of Government, who may embezzle, or otherwise illegally dispose of, any part of the opium produced, shall be liable to a penalty not exceeding ten times the fixed price of the opium which he may be proved to have so disposed of, or to a fine not exceeding five hundred rupees if the amount of the said penalty be less than that sum, and the opium, if found, shall be liable to confiscation.

Penalty for embezzlement of opium by cultivator.

20. Any person purchasing or receiving any opium from a cultivator or other person who may have entered into engagements for the cultivation of the poppy, or who may be employed in the provision of opium on account of Government, or bargaining for the purchase of opium with such cultivator or person, or in any way causing or encouraging such cultivator or person to embezzle or illegally dispose of any opium, and any officer of the Opium Department conniving in any way at the embezzlement or illegal disposal of any opium, shall be liable to a fine not exceeding one thousand rupees, unless the opium purchased, bargained for, or illegally disposed of, shall exceed the weight of thirty-one sers and a quarter, in which case the fine may be increased, at a rate not exceeding thirty-two rupees per ser for all such opium in excess of that weight; and the opium, if found, shall be liable to confiscation.

Penalty for illegal purchase of opium from cultivator.

And for illegal connivance at embezzlement by opium-officer.

21.* Any person who shall cultivate the poppy without license from a Sub-deputy Agent or other officer duly authorized in that behalf, and any person who shall in any way cause, encourage, or promote, such illegal cultivation, shall be liable to a fine not exceeding five hundred rupees, unless the quantity of land so illegally cultivated shall exceed twenty bíghás, in which case the fine may be at the rate of twenty-five rupees per bíghá; and the poppy-plants shall be destroyed, or, if any opium have been extracted from them, it shall be seized and confiscated.

Penalty for unlicensed cultivation.

If the opium shall have been extracted and shall not be seized, the offender shall be liable to a further fine not exceeding the rate of thirty-two rupees per bíghá of land illegally cultivated.

22.* All proprietors, farmers, tahsíldárs, gumáshtas, and other managers of land, shall give immediate information to the police, or ábkárí-dároghas, or opium gumáshtas, or to the Magistrates, Collectors, or officers in charge of the ábkárí mahál, or to the Agents, their deputies, or sub-deputies, of all poppy which may be illegally cultivated within the estates or farms held or managed

Duty of landholders and others to give information of illegal cultivation.

* Ss. 21 to 23 and 25 to 29 of Act XIII. of 1857 have been declared to be in force in the Central Provinces by the Central Provinces Laws Act (XX. of 1875).—See s. 3 and Sch. to Act XX. of 1875.

by them; and every proprietor, farmer, tahsíldár, gumáshta, or other manager of land, who shall knowingly neglect to give such information, shall be liable to the penalties for illegal cultivation prescribed in the last preceding section.

Duty of police and other officers to give information of illegal cultivation.

23.* All police and ábkárí-dároghas and opium gumáshtas, and all native officers of Government of whatever description, and all chaukídárs, paiks, and other village police-officers, shall give immediate information to the authority to which they are subordinate when it may come to their knowledge that any land has been illegally cultivated with poppy; and such authority shall transmit the information, to the Sub-deputy Agent or other officer superintending the cultivation of the poppy if in a district where the poppy is cultivated on account of Government, or to the Collector or officer in charge of the ábkárí mahál if in a district where the poppy is not so cultivated.

Every police or ábkárí-dárogha, opium gumáshta, native officer, chaukídár, or other police-officer as aforesaid, who shall neglect to give such information, or shall in any respect connive at the illicit cultivation of the poppy, shall be liable to a fine not exceeding one thousand rupees if the offender be an officer of the Opium Department, or in any other case to a fine not exceeding five hundred rupees.

Police or ábkárí-dárogha how to proceed in case of illegal cultivation.

24. Whenever a police or ábkárí-dárogha or opium gumáshta shall receive intelligence of any land within his jurisdiction having been illegally cultivated with poppy, he shall immediately proceed to the spot, and, if the information be correct, shall attach the crop so illegally cultivated, and report the same without delay to the Authority to which he may be subordinate.

He shall at the same time take security from the cultivator of the said land for his appearance before the Magistrate; and in the event of such cultivator not giving the required security, he shall send him in custody to the Magistrate.

Landholders, &c., may attach in cases of illegal cultivation.

25.* Proprietors, farmers, tahsíldárs, gumáshtas, and other managers of land, shall be at liberty to attach any poppy grown in opposition to the provisions of this Act in any estate or farm held or managed by them, and shall immediately report such attachment to the nearest police or ábkárí-dárogha or opium gumáshta, who shall thereupon proceed in conformity with the rules contained in the last preceding section.

Adjudication of penalties.

26.* Except as otherwise herein provided, all fines, penalties, and confiscations prescribed by this Act, shall be adjudged by the Magistrate† on the information of the Deputy Agent or Sub-deputy Agent in districts in which the poppy is cultivated on account of Government, and in other districts on the information of the Collector or officer in charge of the ábkárí mahál;

provided that no information of an offence against this Act shall be admitted unless it be preferred within the period of one year after the commission of the offence to which the information refers.

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* Ss. 21 to 23 and 25 to 29 of Act XIII. of 1857 have been declared to be in force in the Central Provinces by the Central Provinces Laws Act (XX. of 1875).—See s. 3 and Sch. to Act XX. of 1875.

† 8 B. L. R. App. 8.

Act XIII. of 1857.

Imprisonment in default of payment of fine.

27.* When any person is sentenced to pay any fine or penalty under this Act, such person, in default of payment of the same, may be imprisoned by order of the Magistrate for any time not exceeding six months, or until the fine is sooner paid.

Punishment for repetition of offences.

28.* Whenever any person shall be convicted of an offence against this Act after having been previously convicted of a like offence, he shall be liable, in addition to the penalty attached to such offence, to imprisonment for a period not exceeding six months; and a like punishment of imprisonment not exceeding six months shall be incurred, in addition to the punishment which may be inflicted for a first offence, upon every subsequent conviction after the second.

Place of imprisonment under section 28.

29.* Every person who shall be imprisoned under the last preceding section, or on account of the non-payment of any fine or penalty prescribed by this Act, unless such person be an officer of Government or a village police-officer convicted of an offence under section 17, 20, or 23, shall be imprisoned in the civil jail.

Disposal of fines and forfeitures.

30. One-half of all fines and penalties levied from persons convicted of offences under sections 19, 20, and 21 of this Act, together with a reward of one rupee eight annas for each ser of opium confiscated and declared by the Civil Surgeon to be fit for use, shall, upon adjudication of the case, be awarded† to the officer or officers who apprehended the offender, and the other half of such fines and forfeitures, together with a reward of one rupee eight annas for each ser of opium confiscated as aforesaid, shall be given to the informer.

If in any case the fine or penalty is not realized, the Board of Revenue may grant such reasonable reward, not exceeding the sum of two hundred rupees, as may seem to them fit.

Governor-General may allow free cultivation of poppy and manufacture of opium in any district.

31. The Governor-General of India in Council may authorize, by an order of Government, the cultivation of the poppy and the manufacture of opium in any district or districts without license from a Sub-deputy Opium Agent or other officer of Government; and when such order has been published, all the provisions of this Act shall cease to have effect in such district or districts:

Power to prescribe rules for delivery to Government officers.

Provided always that the Government may prescribe rules for the delivery of the opium so produced to officers of Government appointed to receive it; and when such rules have been passed, any cultivator or other person engaged in the cultivation of the poppy and manufacture of opium who shall dispose of any opium otherwise than is allowed by such rules, and any person who shall purchase or receive any such opium in contravention of the said rules, shall be subject to the penalties prescribed in section 19 of this Act; and such penalties may be adjudged by a Magistrate on the information of any officer of Government or of any other person.

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* Ss. 21 to 23 and 25 to 29 of Act XIII. of 1857 have been declared to be in force in the Central Provinces by the Central Provinces Laws Act (XX. of 1875).—See s. 3 and Sch. to Act XX. of 1875.

† 8 B. L. R. App. 8.

ACT XXI. OF 1857.*

Act XXI. of 1857.

RECEIVED THE G.-G.'S ASSENT ON THE 10TH JULY 1857.

An Act to make better provision for the order and good government† of the station of Howrah.

Preamble.

WHEREAS Acts have been passed for regulating the police and for the conservancy and improvement of the town of Calcutta and of the other Presidency-towns; and whereas large portions of† the station of Howrah are not less populous than parts of the said town, and it will conduce to the order and good government of the said† station that some of the provisions of the said Acts, with certain necessary modifications, should be extended to the said† station; it is enacted as follows:—

Cases under this Act by whom to be tried.

1. Whoever is charged with having committed any of the offences mentioned in this Act within the limits of the said† station, as described in the schedule hereunto annexed, may be tried, for any such offence, by the Magistrate within whose jurisdiction the offence is alleged to have been committed, and, on conviction, may be sentenced by such Magistrate to the punishment hereinafter prescribed for the offence.

Possession of stolen property by one who fails to account satisfactorily therefor.

2. *Clause 1.*—Whoever has in his possession, or conveys in any manner, any thing which may be reasonably suspected of being stolen or fraudulently obtained, shall, if he fail to account satisfactorily how he came by the same, be liable to a penalty not exceeding one hundred rupees, or to imprisonment, with or without hard labour, for any term not exceeding three months.

Power to summon persons declared to have had possession of stolen property within the jurisdiction of the Magistrate.

Clause 2.—If any person, charged with having or conveying any thing stolen or fraudulently obtained, shall declare that he received the same from some other person, or that he was employed as a carrier, agent, or servant, to convey the same for some other person, the Magistrate may cause every such other person, and also, if necessary, every former or pretended purchaser or other person through whose possession the same shall have passed (provided that such other person shall be alleged to have had possession of the same within the jurisdiction of such Magistrate) to be brought before him and examined, and shall examine witnesses touching the same;

Penalty if such possession fraudulent.

and if it appear to such Magistrate that any person so brought before him had possession of such thing, and had reasonable cause to believe the same to have been stolen or unlawfully obtained, such person shall be liable to a penalty not exceeding one hundred rupees, or to imprisonment, with or without hard labour, for any term not exceeding three months.

Apprehension and punishment of reputed thieves, &c.

3. Any person found, between sunset and sunrise, armed with any dangerous or offensive instrument whatsoever with intent to commit any offence against the person or property of another; any reputed thief found, between sunset and sunrise, on board any

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* Act XXI. of 1857 has been repealed in so far as it applied to the suburbs of the town of Calcutta by Ben. Acts II. of 1866 (s. 52) and VIII. of 1868 (s. 1).

† Certain words in the title, the preamble, and s. 1, referring to the suburbs of Calcutta, repealed by Act XVI. of 1874, s. 1, have here been omitted.

Act XXI. of 1857.

vessel or boat, or lying or loitering in any bázár, street, road, yard, thoroughfare, or other place, who shall not give a satisfactory account of himself; any person found, between sunset and sunrise, having his face covered or otherwise disguised, with intent to commit any such offence as aforesaid; any person found, between sunset and sunrise, in any dwelling-house or other building whatsoever, without being able satisfactorily to account for his presence therein; and any person having in his possession, without lawful excuse (the proof of which excuse shall be on such person) any implement of house-breaking, shall be liable to imprisonment, with or without hard labour, for a term not exceeding three months; and any such person may be taken into custody by any police-officer without a warrant.

4 to **6**. [*Repealed by Ben. Act III. of 1884, s. 2.*]

7. On the complaint of three or more householders, that a house in their immediate neighbourhood is used as a common brothel or lodging-house for prostitutes or disorderly persons of any description, to the annoyance of the respectable inhabitants of the vicinity, the Magistrate may summon the owner or tenant of the house to answer the complaint; and on being satisfied that the house is so used, and is therefore a source of annoyance and offence to the neighbours, may order the owner or tenant to discontinue such use of it; and, if he shall fail to comply with such order within five days, may impose upon him a fine to the extent of twenty-five rupees for every day thereafter that the house shall be so used.

Brothels.

8, 9. [*Repealed by Ben. Act III. of 1884, s. 2.*]

10. Whoever, being the owner or occupier, or having the use, of any house, room, or place, keeps or uses the same as a common gaming-house; and whoever, being the owner or occupier of any house or room, knowingly and wilfully permits the same to be kept or used by any other person as a common gaming-house; and whoever has the care or management of, or in any manner assists in conducting, the business of any house, room, or place so kept or used; and whoever advances or furnishes money for the purpose of gaming with persons frequenting such house, room, or place, shall be liable to a fine not exceeding two hundred rupees, or to imprisonment, with or without hard labour, for any term not exceeding three months.

Penalty for owning, or keeping, or having charge of, a gaming-house, &c.

11. Whoever is found in any such house, room, or place, playing or gaming with cards, dice, counters, money, or other instruments of gaming, or is found there present for the purpose of gaming, whether playing for any money, wager, stake, or otherwise, shall be liable to a fine not exceeding one hundred rupees, or to imprisonment, with or without hard labour, for any term not exceeding one month; and any person found in any common gaming-house during any gaming or playing therein, shall be presumed, until the contrary be proved, to have been there for the purpose of gaming.

Penalty for being found playing in a gaming-house.

12. If the Magistrate, upon information on oath, and after such enquiry as he may think necessary, has reason to believe that any house, room, or place is used as a common gaming-house, he may, by his warrant, give authority to any superior officer of police to enter, with such assistance as may be found necessary, by night or by day, and by force if necessary, any such house, room,

Magistrate may authorize certain police to enter gaming-house for search and seizure.

or other place; and to take into custody all persons whom he finds therein, whether or not then actually gaming; and to seize all instruments of gaming, and all moneys and securities for money, and articles of value, reasonably suspected to have been used or intended to be used for the purpose of gaming which are found therein; and to search all parts of the house, room, or place which he shall have so entered, when he has reason to believe that any instruments of gaming are concealed therein, and also the persons of those whom he so takes into custody; and to seize and take possession of all instruments of gaming found upon such search. Act XXI. of 1857.

13. On conviction of any person for keeping any such common gaming-house or being present therein for the purpose of gaming, all the instruments of gaming found therein shall be destroyed by order of the Magistrate, who may also order all or any of the securities for money, and other articles seized, not being instruments of gaming, to be sold and converted into money, and the proceeds thereof, with all moneys seized therein, to be forfeited, or, in his discretion, may order any part thereof to be returned to the persons appearing to have been severally thereunto entitled.

On conviction for keeping a gaming-house, instruments of gaming to be destroyed, &c.

14. The Magistrate may direct any portion, not exceeding one-fourth, of any fine which shall be levied under sections 10 and 11 of this Act, or any part of the moneys or proceeds of articles seized and ordered to be forfeited, under section 13, to be paid to an informer.

Portion of fine may be paid to informer.

15. A police-officer may apprehend without warrant any person found gaming with cards, dice, counters, money, or other instruments of gaming, in any public street, place, or thoroughfare; and such person shall be liable to a fine not exceeding twenty rupees, or to imprisonment, with or without hard labour, for any term not exceeding one month; and such instruments of gaming and money shall be forfeited.

Gambling in streets.

16, 17. [*Repealed by Ben. Act III. of 1884, s. 2.*]

18. Whoever manufactures gunpowder, or without a license from the Magistrate has in his possession, in any house, shop, warehouse, or other building, at any one time, a greater quantity of gunpowder than ten pounds, shall be liable to a fine not exceeding two hundred rupees, and also to forfeit such gunpowder so manufactured or possessed, together with the vessel or receptacle in which it may be contained.

Manufacture or possession of gunpowder.

19. The Magistrate may grant to any person a license for the sale or keeping in deposit of any quantity of gunpowder not exceeding fifty pounds, on such conditions, and for such term not exceeding one year, as shall be specified in the license; and any person who shall be guilty of a breach of any of such conditions shall be liable to a fine not exceeding one hundred rupees, and to forfeit all gunpowder so kept in deposit contrary thereto, and the vessels containing it, and also to forfeit his license.

Licenses by Magistrate for sale and deposit of gunpowder, &c.

20. Whoever is found drunk and incapable of taking care of himself, or is guilty of any riotous or indecent behaviour in any street or thoroughfare, or in any place of public amusement or resort, and whoever is guilty of violent

Penalty for drunkenness, or riotous or indecent behaviour in public.

Act XXI. of 1857.

behaviour in any police-office, shall be liable to a fine not exceeding twenty rupees, or to imprisonment, with or without hard labour, for a term not exceeding fourteen days.

Penalty for committing nuisance in streets.

21. Whoever wilfully and indecently exposes his person, or commits a nuisance by easing himself in or by the side of or near to any public street or thoroughfare or place, shall be liable to a fine not exceeding ten rupees, or, in default of payment thereof, to imprisonment, with or without hard labour, for a term not exceeding fourteen days.

Beggars.

22. Whoever, in any public road, street, thoroughfare, or place, begs or applies for alms, or exposes or exhibits any sores, wounds, bodily ailment, or deformity, with the object of exciting charity or of obtaining alms; or whoever seeks for or obtains alms, by means of any false statement or pretences, shall be liable to imprisonment, with or without hard labour, for any term not exceeding one month.

Penalty for committing, in public streets, the offences of furious or negligent driving or riding:

23. Whoever, in any public street, road, thoroughfare, or place of public resort, commits any of the following offences, shall be liable to a fine not exceeding twenty rupees:—

i.—Whoever drives or rides any animal, or drives any vehicle, in a manner so rash or negligent as to indicate a want of due regard for the safety of others:

Letting loose horses, ferocious dogs, &c.

ii.—Whoever negligently lets loose any horse, or suffers to be at large any ferocious dog without a muzzle, or sets on or urges any dog or other animal to attack, worry, or put in fear, any person, horse, or other animal:

Leaving cart, &c., without control:

iii.—Whoever, being in charge of a cart, carriage, or horse, leaves it at such a distance as not to have the same under due control:*

Obstructing passengers:

iv.—Whoever fastens any animal so as to cause obstruction or danger to passengers:

Ill-treating animals:

v.—Whoever cruelly beats, abuses, or tortures any animal:

Lighting fires, discharging guns, fire-works, &c.

vi.—Whoever sets fire to or burns any straw or other matter, or lights any bonfire, or wantonly discharges any fire-arm or air-gun, or lets off or throws any fire-work, or sends up any fire-balloon.

24. [*Repealed by Ben. Act III. of 1884, s. 2.*]

25 to **32.** [*Repealed by Ben. Act V. of 1876, s. 2.*]

33 to **37.** [*Repealed by Ben. Act III. of 1884, s. 2.*]

38. [*Repealed by Ben. Act V. of 1876, s. 2.*]

39. [*Repealed by Ben. Act III. of 1884, s. 2.*]

40 to **45.** [*Repealed by Ben. Act V. of 1876, s. 2.*]

46. [*Repealed by Ben. Act III. of 1884, s. 2.*]

* Repealed, in the town and suburbs of Calcutta, by Ben. Act I. of 1864, as regards drivers of hackney-carriages under that Act.

47 to **50**. [*Repealed by Ben. Act V. of 1876, s. 2.*]

51. Any police-officer may arrest without a warrant any person committing in his view any offence against this Act, if the name and address of such person be unknown to him.

Police-officer may arrest without warrant on view of offence.

52. Any police-officer may take into custody, without a warrant, any person who is charged with committing an aggravated assault, in every case in which he shall have good reason to believe that such assault has been committed, although not in his view, and that, by reason of the recent commission of the offence, a warrant could not have been obtained for the apprehension of the offender.

Police may take into custody, without warrant, persons charged with recent aggravated assault.

53. Every person taken into custody without a warrant by a police-officer under this Act shall be taken to the nearest police-office in order that such person may be detained until he can be brought before the Magistrate, or until he shall enter into recognizances, with or without sureties, for his appearance before the Magistrate.

Persons taken into custody by police without warrant may be detained in police-office until brought before Magistrate or bailed.

Any person so detained and not entering into recognizances shall be carried before the Magistrate *within twenty-four hours* from the time of his being taken into custody.

54. Upon any information or complaint laid before the Magistrate of any offence committed against this Act, the Magistrate may summon the person charged to appear at a time to be mentioned in the summons; or, if he see sufficient cause for so doing, may issue a warrant for his apprehension.

Procedure on information or complaint laid before Magistrate of offence against Act.

The provisions of the general Regulations of the Bengal Code and Acts of the Government of India for the time being in force, relative to the issue and service of summonses and warrants, to the summons, attendance, and examination of witnesses, and generally to the trial of cases, to the recovery of fines and penalties, and to appeals against orders and sentences passed by a Magistrate, shall be applicable to all cases under this Act.

Provided that, in all cases of offences punishable with fine only, if after due service of summons the person charged shall not appear in pursuance thereof, the Magistrate, at his discretion, may hear and determine the case in his absence.*

55. In all cases where any costs or expenses are by this Act directed to be paid, the amount of the same shall be ascertained and determined by the Magistrate; and the Magistrate may, for that purpose, summon the parties, and examine them and the witnesses on their behalf; and such amount, together with the costs of the enquiry, shall be recoverable in the same manner as fines may be recovered.

Recovery of costs or expenses.

56. Any Joint Magistrate or Deputy Magistrate duly authorized to exercise the powers of a Magistrate, and any Assistant vested with special powers, may, in cases referred to him by the Magistrate, exercise all the powers vested in a Magistrate by this Act.

Jurisdiction.

* The second proviso of s. 54, repealed by Act XII. of 1891, Sch. I., has been omitted.

Act XXI. of 1857.

57. All fines imposed and levied under this Act shall be applied in aid of any fund applicable to police and conservancy purposes in the said station; and all costs and expenses which the Magistrate is hereby authorized to incur, shall be paid from and repaid to such fund; or, if there be no such fund, all such fines as aforesaid shall be applied by the Magistrate to the cleansing or otherwise improving of the said station.

Application of fines.

58. [*Repealed by Act XII. of 1891, Sch. I.*]

59. In the construction of this Act, words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number; words importing the masculine gender shall include females.

Interpretation.

SCHEDULE.*

Of Places included in the Station of Howrah.

STATION OF HOWRAH.

Howrah (including)
- Panchánantalá.
- Juláhápárá.
- Chándmárí (with Tandel Bágán).
- North Betrá.
- South Betrá.
- Ichhápur.
- Saunpur.
- Goládángá.
- Rámkrishnapur.
- Khúrát (with Kasondiyá).
- Chakarber.
- Sántrágáchhi.
- Sathgharra.
- Gudar Hát (with Kinkar Chatterjea's Hát).
- Battore.

Shibpur (with Báji Shibpur, Majerhát, Bharpára, Bhattatála, Sriharinaupárá, Bishop's College, and Company's Botanical Garden).
- Padmapukhar.
- South Baksará.
- North Baksará.

Salkiyá (including) Bándághát (with Haraganj and Bánurjyapárá).
- Ghoosery (with Bhát Bágán).
- Málípánchghará.
- Barrackpur.
- Bellur.
- Naksha.
- Chakpára.
- Nallua.
- Belgáchhiyá (with Paikán Belgáchhiyá).
- Báhmangachái.
- Chaurásta (with Dharmtalá Goghátá, and Bábudángá).
- Golábárí (with Fílkhána).

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* The part of the schedule headed "Suburbs of Calcutta," repealed by Act XVI. of 1874, s. 1, has been omitted.

ACT XXII. OF 1857.*

RECEIVED THE G.-G.'S ASSENT ON THE 18TH JULY 1857.

An Act to establish and incorporate an University at Bombay.

Preamble.

WHEREAS, for the better encouragement of Her Majesty's subjects of all classes and denominations within the Presidency of Bombay and other parts of India in the pursuit of a regular and liberal course of education, it has been determined to establish an University at Bombay for the purpose of ascertaining, by means of examination, the persons who have acquired proficiency in different branches of Literature, Science, and Art, and of rewarding them by academical degrees as evidence of their respective attainments, and marks of honour proportioned thereunto; and whereas, for effectuating the purposes aforesaid, it is expedient that such University should be incorporated; It is enacted as follows:†—

Incorporation.

1. The following persons, namely,

The Right Honourable John, Lord Elphinstone, Governor of Bombay;

The Honourable Sir William Yardley, Knight, Chief Justice of the Supreme Court of Judicature at Bombay;

The Right Reverend John Harding, Doctor of Divinity, Bishop of Bombay, *ex-officio;*

The Honourable Sir Henry Somerset, Lieutenant-General, Knight Companion of the Most Honourable Order of the Bath, Commander-in-Chief of the Forces in Bombay, *ex-officio;*

The Honourable James Grant Lumsden, Member of the Council of Bombay, *ex-officio;*

The Honourable Arthur Malet, Member of the Council of Bombay, *ex-officio;*

Edward Irvine Howard, Esquire, Director of Public Instruction, *ex-officio;*

Robert Haines, Esquire, M.D., Acting Educational Inspector, Presidency Division, *ex-officio;*

C. Morehead, Esquire, M.D., Principal of the Grant Medical College, *ex-officio;*

John Harkness, Esquire, LL.D., Principal of the Elphinstone College, *ex-officio;*

The Reverend James McDougall, Acting Principal of the Poona College, *ex-officio;*

Philip William LeGeyt, Esquire, Member of the Legislative Council of India;

The Honourable Sir Matthew Richard Sausse, Knight, Puisne Judge of the Supreme Court of Judicature at Bombay;

Sir Jamsetjee Jeejeebhoy, Knight;

Metcalfe Larken, Esquire, Judge of the Sadr Court in Bombay, and President of the late Board of Education;

Juggonauth Sunkersett, Esquire, Member of the late Board of Education;

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* See also Acts XLVII. of 1860 and I. of 1884.

† Certain words, repealed by Act XII. of 1876, have here been omitted.

Act XXII. K 1857.

Bomanjee Hormusjee, Esquire, Member of the late Board of Education;

Bhao Dajee, Esquire, Graduate of the Grant Medical College, Member of the late Board of Education;

Matthew Stovell, Esquire, Surgeon in the Bombay Army, Secretary to the late Board of Education;

Claudius James Erskine, Esquire, Civil Service, late Director of Public Instruction;

William Edward Frere, Esquire, Member of the Royal Asiatic Society, and President of the Bombay Branch of the Royal Asiatic Society, Judge of the Sadr Court in Bombay;

Major-General Charles Waddington, Companion of the Most Honourable Order of the Bath, Chief Engineer of Public Works;

The Reverend John Wilson, Doctor of Divinity, Fellow of the Royal Society, Honorary President of the Bombay Branch of the Royal Asiatic Society;

The Reverend Philip Anderson, Master of Arts, Chaplain on the Bombay Establishment;

Henry Bartle Edward Frere, Esquire, Commissioner in Sindh;

Lieutenant Edward Frederick Tierney Fergusson, Indian Navy;

Mahomed Yusoof Moorgay, Kázi of Bombay;

James John Berkley, Esquire, Fellow of the Geographical Society, M.I.C.E., President of the Bombay Mechanics' Institution, and Chief Resident Engineer of the Great Indian Peninsula Railway Company.

Henry Lacon Anderson, Esquire, Secretary to Government;

being the first Chancellor, Vice-Chancellor, and Fellows of the said University, and all the persons who may hereafter become or be appointed to be Chancellor, Vice-Chancellor, or Fellows as hereinafter mentioned, so long as they shall continue to be such Chancellor, Vice-Chancellor, or Fellows are hereby constituted and declared to be one Body Politic and Corporate by the name of the University of Bombay; and such Body Politic shall by such name have perpetual succession, and shall have a common seal, and by such name shall sue and be sued, implead and be impleaded, and answer and be answered unto, in every Court of Justice within the territories[1] under the Government of[2] India[3].

Power to hold and dispose of property.

2. The said Body Corporate shall be able and capable in law to take, purchase, and hold any property, moveable or immoveable, which may become vested in it for the purposes of the said University by virtue of any purchase, grant, testamentary disposition, or otherwise; and shall be able and capable in law to grant, demise, alien, or otherwise dispose of all or any of the property, moveable or immoveable, belonging to the said University; and also to do all other matters incidental or appertaining to a Body Corporate.

Constitution of Body Corporate.

3. The said Body Corporate shall consist of one Chancellor, one Vice-Chancellor, and such number of *ex-officio* and other Fellows as the Governor of Bombay in Council hath already appointed, or shall from time to time, by any order published in the

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[1] Here the words "in the possession and,"
[2] Here the words "the East,"
[3] Here the word "Company,"

being repealed by Act XII. of 1891, Sch. I., have been omitted.

Bombay Gazette, hereafter appoint; and the Chancellor, Vice-Chancellor, and Fellows for the time being, shall constitute the Senate of the said University. Provided that, if any person being Chancellor, Vice-Chancellor or Fellow of the said University, shall leave India without the intention of returning thereto, his office shall thereupon become vacant.

Senate.

Office vacated by leaving India.

Chancellor.

4. The Governor of Bombay for the time being shall be the Chancellor of the said University.*

Vice-Chancellor.

5.* The office of Vice-Chancellor shall be held for two years only. Whenever a vacancy shall occur in the office of Vice-Chancellor of the said University by death, resignation, departure from India, effluxion of time, or otherwise, the Governor of Bombay in Council shall, by notification in the *Bombay Gazette*, nominate a fit and proper person, being one of the Fellows of the said University, to be Vice-Chancellor in the room of the person occasioning such vacancy. Provided that on any vacancy in the said office which shall occur by effluxion of time, the Governor of Bombay in Council shall have power to re-appoint any future Vice-Chancellor to such office.

Fellows.

6. The Chief Justice of Her Majesty's Supreme Court of Judicature, the Bishop of Bombay, the members of the Council of Bombay, the Director or Acting Director of Public Instruction, the Educational Inspector or Acting Educational Inspector of the Presidency Division, the Principals and Acting Principals of Government Colleges, all for the time being, shall, while filling such offices, be *ex-officio* Fellows of the said University. The whole number of the Fellows of the said University, exclusive of the Chancellor and Vice-Chancellor for the time being, shall never be less than twenty-six; and whenever the number of the said Fellows, exclusive as aforesaid, shall, by death, resignation, departure from India, or otherwise, be reduced below twenty-six, the Governor of Bombay in Council shall forthwith, by notification in the *Bombay Gazette*, nominate so many fit and proper persons to be Fellows of the said University as, with the then Fellows of the said University, shall make the number of such Fellows, exclusive as aforesaid, twenty-six. But nothing herein contained shall prevent the Governor of Bombay in Council from nominating more than twenty-six persons to be Fellows of the said University if he shall see fit.

The appointment of a Fellow may be cancelled.

7. The Governor of Bombay in Council may cancel the appointment of any person already appointed or hereafter to be appointed a Fellow of the University; and as soon as such order is notified in the Gazette, the person so appointed shall cease to be a Fellow.

Chancellor, Vice-Chancellor, and Fellows, to superintend the affairs of the University.

8. The Chancellor, Vice-Chancellor, and Fellows for the time being, shall have the entire management of, and superintendence over, the affairs, concerns, and property of the said University; and in all cases unprovided for by this Act, it shall be lawful for the Chancellor, Vice-Chancellor, and Fellows to act in such manner as shall appear to them best calculated to promote the purposes intended by the said University. The said Chancellor, Vice-Chancellor, and Fellows, shall have full power, from time

* Certain words, repealed by Act XII. of 1876, have been omitted.

Act XXII. of 1857.

to time, to make and alter any bye-laws and regulations (so as the same be not repugnant to law, or to the general objects and provisions of this Act) touching the examination for degrees and the granting of the same; and touching the examination for honours and the granting of marks of honour for a higher proficiency in the different branches of Literature, Science, and Art; and touching the qualifications of the candidates for degrees, and the previous course of instruction to be followed by them, and the preliminary examinations to be submitted to by them; and touching the mode and time of convening the meetings of the Chancellor, Vice-Chancellor, and Fellows; and, in general, touching all other matters whatever regarding the said University. And all such bye-laws and regulations, when reduced into writing, and after the common seal of the said University shall have been affixed thereto, shall be binding upon all persons, members of the said University, and all candidates for degrees to be conferred by the same, provided such bye-laws and regulations shall have been first submitted to, and shall have received the approval of, the Governor of Bombay in Council.

Bye-laws.

9. All questions which shall come before the Chancellor, Vice-Chancellor, and Fellows, shall be decided at a meeting of the Senate by the majority of the members present; and the Chairman at any such meeting shall have a vote, and, in case of an equality of votes, a second or casting vote. No question shall be decided at any meeting, unless the Chancellor, or Vice-Chancellor, and five Fellows, or, in the absence of the Chancellor and Vice-Chancellor, unless six Fellows at the least shall be present at the time of the decision. At every meeting of the Senate, the Chancellor, or in his absence the Vice-Chancellor, shall preside as Chairman; and, in the absence of both, a Chairman shall be chosen by the Fellows present, or the major part of them.

Meetings of the Senate.

10. The said Chancellor, Vice-Chancellor, and Fellows for the time being, shall have full power from time to time to appoint and, as they shall see occasion, to remove all examiners, officers, and servants of the said University.

Appointment and removal of examiners and officers.

11. The said Chancellor, Vice-Chancellor, and Fellows, shall have power, after examination, to confer the several degrees of Bachelor of Arts, Master of Arts, Bachelor of Laws, Licentiate of Medicine, Doctor of Medicine, and Master of Civil Engineering; they shall also have power, after examination, to confer upon the candidates for the said several degrees marks of honour for a high degree of proficiency in the different branches of Literature, Science, and Art, according to rules to be determined by the bye-laws to be from time to time made by them under the power in that behalf given to them by this Act.

Power to confer degrees.

12. Except by special order of the Senate, no person shall be admitted as a candidate for the degree of Bachelor of Arts, Master of Arts, Bachelor of Laws, Licentiate of Medicine, Doctor of Medicine, or Master of Civil Engineering, unless he shall present to the said Chancellor, Vice-Chancellor, and Fellows, a certificate from one of the institutions authorized in that behalf by the Governor of Bombay in Council, to the effect that he has completed the course of instruction prescribed by the Chancellor, Vice-Chancellor, and Fellows of the said University, in the bye-laws to be made by them under the power in that behalf given by this Act.

Qualification for admission of candidates for degrees.

13. The said Chancellor, Vice-Chancellor, and Fellows shall cause an examination for degrees to be held at least once in every year; on every such examination the candidates shall be examined either by examiners appointed for the purpose from among the Fellows by the said Chancellor, Vice-Chancellor, and Fellows, or by other examiners so to be appointed; and on every such examination the candidates, whether candidates for an ordinary degree, or for a degree with honours, shall be examined on as many subjects and in such manner as the said Chancellor, Vice-Chancellor, and Fellows shall appoint.

Examination for degrees.

14. At the conclusion of any examination of the candidates, the examiners shall declare the name of every candidate whom they shall have deemed entitled to any of the said degrees, and his proficiency in relation to other candidates; and also the honours which he may have gained in respect of his proficiency in that department of knowledge in which he is about to graduate; and he shall receive from the said Chancellor a certificate, under the seal of the said University of Bombay, and signed by the said Chancellor, or Vice-Chancellor, in which the particulars so stated shall be declared.

Grant of degrees.

15. The said Chancellor, Vice-Chancellor, and Fellows shall have power to charge such reasonable fees for the degrees to be conferred by them, and upon admission into the said University, and for continuance therein, as they, with the approbation of the Governor of Bombay in Council, shall from time to time see fit to impose. Such fees shall be carried to one General Fee Fund for the payment of expenses of the said University, under the directions and regulations of the Governor of Bombay in Council, to whom the accounts of income and expenditure of the said University shall once in every year be submitted for such examination and audit as the said Governor of Bombay in Council may direct.

Fees.

Annual accounts.

Act XXV. of 1857.

ACT XXV. OF 1857.*

RECEIVED THE G.-G.'S ASSENT ON THE 8TH AUGUST 1857.

An Act† to provide for the adjudication and recovery of forfeitures of property in certain cases.

Preamble.

WHEREAS it is expedient† to provide for the adjudication and recovery of forfeitures in certain cases; It is enacted as follows :—

1. [*Repealed by Act V. of 1869, Part I. (c).*]

Adjudication of forfeiture in case of death or escape of offender before conviction of an offence for which property is liable to be forfeited.

2. If any person who shall have committed treason or any offence for which, "by the Indian Penal Code, section 121 or section 122, or the Indian Articles of War, Article 24,"‡ his property is declared to be forfeited, shall have been killed, or shall have died, or shall have escaped out of the territories of the East India Company, before he shall have been convicted of the offence, or cannot after diligent search be found, any Court or other authority which might have tried such offender, if he could have been brought to trial, shall, upon the application of the Magistrate§ or other officer authorized by Government to make such application, hold an enquiry, and on proof that the person charged with having committed the offence was guilty thereof, and that he is dead, or has escaped out of the territories of the East India Company, or cannot after diligent search be found, shall adjudge that all the property of such offender shall be forfeited to Government.

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* Act XXV. of 1857 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

Sindh	See *Gazette of India*	. Dec. 4, 1880, Pt. I., p. 672.
West Jalpáiguri and the Western Dvárs	Ditto	. Mar. 5, 1881, Pt. I., p. 74.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	. Oct. 22, 1881, Pt. I., p. 504.
The Jhánsí Division . . .	Ditto	. Aug. 31, 1878, Pt. I., p. 546.
The scheduled portion of the Mirzápur District . . .	Ditto	. May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	. May 31, 1879, Pt. I., p. 382.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán	Ditto	. Jan. 30, 1886, Pt. I., p. 48.
The Scheduled Districts of the Central Provinces . . .	Ditto	. Dec. 3, 1879, Pt. I., p. 771.
The District of Silhat . . .	Ditto	. Oct. 4, 1879, Pt. I., p. 631.

It has been declared, under the same Act, not to be in force in the Scheduled District of Lahaul.—See *Gazette of India*, May 1, 1886, Pt. I., p. 301.

† Here certain words, repealed by Act XII. of 1891, Sch. I., have been omitted.

‡ The words quoted have been substituted by Act XII. of 1891, Sch. II.

§ See s. 11, *infra*.

3. The forfeiture, whether upon conviction of such an offence as aforesaid,* or upon an adjudication of forfeiture under this Act, shall extend to all property and effects of or to which the offender shall have been possessed or entitled,† either at the time of committing the offence, or at the time of the conviction or of the adjudication of forfeiture, or at any intermediate time; and no sale, alienation, or other disposition of such property, made subsequently to the commission of the offence, or made at any time with the fraudulent intention of preventing a forfeiture, shall have any effect against the right of Government to the forfeiture. Provided that nothing in this section contained shall affect any transferee of any negotiable security, who shall prove that he acquired the same in good faith and with due caution for valuable consideration.

Forfeiture to extend to all property possessed by offender at the date of offence.

Proviso.

4. All immoveable property of the offender, which shall be alienated after the passing of this Act, and before the commission of any offence specified in section 2, shall be forfeited in the same manner as if no such alienation had been made, unless the alienation be made in good faith and for valuable consideration, or unless the same shall have been made and registered more than three months before the commission of the offence.‡

Forfeiture of land voluntarily alienated before committing offence.

5. The Court, or other authority by which the offender shall be convicted or the forfeiture shall be adjudged, may specify in the conviction or adjudication the day on which the offence was committed, if it can be ascertained.

Court may specify in conviction date of offence.

6. In any proceeding concerning property alleged to have been forfeited, the conviction shall be conclusive evidence that the offence was committed, and (if the day be specified in such conviction) that the offence was committed on that day; if the day be not specified, the conviction shall be *primâ-facie* evidence that the offence was committed on the day mentioned in the charge. In any such proceeding, an adjudication of forfeiture under this Act shall be *primâ-facie* evidence of the commission of the offence, and (if the day be specified in the adjudication) that the offence was committed on that day; if the day be not specified, the adjudication shall be *primâ-facie* evidence that the offence was committed on the day mentioned in the charge.§ Any adjudication under this Act shall be filed with and may be proved in the same manner as the records of the principal Court of criminal jurisdiction of the district.

Matters proved by conviction or adjudication.

7. After the conviction or adjudication, the Collector or other chief officer appointed by Government for the collection of revenue, or any other officer whom the Government may specially appoint, may seize and take possession of the forfeited property;

Procedure for recovery of forfeited property.

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* *Ganeshlal* v. *Amir Khan*, 8 B. L. R. 83.

† Marshall, 259, 308.

‡ This is "to prevent a disposition of his lands by gift, &c., on the part of a person contemplating the commission of any of the specified offences."—*Report of Select Committee.*

§ "When an offender appears to take his trial, and is convicted, the conviction should be conclusive evidence of his guilt, and also of the time when the offence was committed (if the conviction states the time). But when the guilt of the offender and the forfeiture of his property are adjudged in his absence, or after his death, the adjudication should, we think, be no more than *primâ-facie* proof." — *Report of Select Committee.*

Act XXVII. of 1857.

if he require the assistance of a Court to enable him to obtain possession of any such property by reason of any dispute respecting the title to the same or for any other cause, the principal Civil Court of original jurisdiction of the district in which the property is situate may, upon the production of a certified copy of the conviction or adjudication, hear and determine in a summary manner upon petition any matter in dispute relating to such property. Any order which may be passed by the Court shall not be subject to appeal; but the party against whom the same may be given, by any Court other than one of Her Majesty's Supreme Courts of Judicature, shall be at liberty to bring a suit to establish his right at any time within one year from the date of the order.

Forfeited property or the proceeds to be restored upon proof that escape was not for the purpose of evading justice.

8. In case any person whose property shall have been so adjudged to be forfeited shall, within one year after the seizure of any part of his property as a forfeiture, surrender himself, and shall, upon trial before a competent Court, be acquitted of the offence, his property, or the proceeds thereof, shall be restored upon proof, to the satisfaction of the Court, that he did not escape or keep out of the way for the purpose of evading justice.

9. [*Repealed by Act IX. of 1871.**]

Power to secure property before forfeiture in certain cases.

10. In case it shall appear to a Magistrate that there is reasonable ground to suppose that any person is guilty of any offence specified in section 2 of this Act, and that any property liable to forfeiture for the offence is likely to be made away with, it shall be lawful for the Magistrate to attach such property and secure the same until the trial of the offender or until an enquiry for the purpose of adjudication under this Act shall be had.†

Interpretation-clause.

11. The word "Magistrate" in this Act shall include any officer competent to commit for trial for any offence specified in section 2 of this Act.

ACT XXVII. OF 1857.‡

RECEIVED THE G.-G.'S ASSENT ON THE 5TH SEPTEMBER 1857.

An Act to establish and incorporate an University at Madras.

Preamble.

WHEREAS, for the better encouragement of Her Majesty's subjects of all classes and denominations within the Presidency of Fort St. George and other parts of India in the pursuit of a regular and liberal course of education, it has been determined to establish an University at Madras for the purpose of ascertaining, by means of examination, the persons who have acquired proficiency in different branches of Literature, Science, and Art, and of rewarding them by academical degrees as evidence of their respective attainments, and marks of honour proportioned

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* But see 13 B. L. R. 445.

† The object of this section is "to prevent the making away with property liable to forfeiture during the interval before trial or adjudication."—*Report of Select Committee.*

‡ See also Acts XLVII. of 1860 and I. of 1884.

thereunto; and whereas, for effectuating the purposes aforesaid, it is expedient that such University should be incorporated: It is enacted as follows:*— Act XXVII. of 1857.

Incorporation.

1. The following persons, namely,

The Right Honourable George Francis Robert, Lord Harris, Governor of Fort St. George;

The Honourable Sir Christopher Rawlinson, Knight, Chief Justice of the Supreme Court of Judicature at Madras;

The Right Reverend Thomas Dealtry, Doctor of Divinity, Bishop of Madras, *ex-officio*;

The Honourable Sir Patrick Grant, Lieutenant-General, Knight Commander of the Most Honourable Order of the Bath, Commander-in-Chief of the Forces in Madras, *ex-officio*;

The Honourable Walter Elliot, Member of the Council of Madras, *ex-officio*;

The Honourable Sir Henry Conyngham Montgomery, Baronet, Member of the Council of Madras, *ex-officio*;

Alexander John Arbuthnot, Esquire, Director of Public Instruction, *ex-officio*;

Eyre Burton Powell, Esquire, Principal of the Presidency College, *ex-officio*;

Henry Fortey, Esquire, Acting Principal of the Presidency College, *ex-officio*;

James Kellie, Esquire, President of the Medical College Council, *ex-officio*;

The Honourable Sir Henry Davison, Knight, Puisne Judge of the Supreme Court of Judicature at Madras;

Thomas Pycroft, Esquire, Chief Secretary to Government;

Edward Maltby, Esquire, Acting Chief Secretary to Government;

James Dewar Bourdillon, Esquire, Secretary to Government;

Henry Forbes, Esquire, Acting Secretary to Government;

Colonel Charles Alfred Browne, Secretary to Government;

James Blair Preston, Esquire, Physician-General;

The Reverend Robert Halley, Master of Arts, Principal of the Doveton College;

J. Townshend Fowler, Esquire, Principal of the Government Normal School;

P. Soobroyooloo Naidoo, President of Patcheappah's Institution;

William Ambrose Morehead, Esquire, Provisional Member of the Council of Madras;

Guy Lushington Prendergast, Esquire, Accountant-General;

Colonel Arthur Thomas Cotton, Commandant of Engineers;

Colonel Charles Edward Faber, Chief Engineer in the Department of Public Works;

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* Certain formal words, repealed by Act XII. of 1876, have been omitted.

Act XXVII. of 1857.

Lieutenant-Colonel Thomas Townsend Pears, Companion of the Most Honourable Order of the Bath, Consulting Engineer for Railways;

Lieutenant-Colonel George Balfour, Companion of the Most Honourable Order of the Bath;

The Reverend John Richards, Master of Arts;

Lieutenant-Colonel Frederick Conyers Cotton, Acting Mint Master;

Chittur Runganadum Sastry, Head Interpreter in the Supreme Court of Judicature;

John Emelius Mayer, Esquire, Professor of Chemistry and Pharmacy in the Madras Medical College;

The Reverend Robert Kerr Hamilton, Master of Arts;

The Reverend George Hall, Master of Arts;

The Reverend Peter Sorenson Royston, Bachelor of Arts;

James Sanderson, Esquire, Surgeon in the Madras Army;

The Reverend John Braidwood, Master of Arts;

John Dawson Mayne, Bachelor of Arts, Professor of Law, Moral and Mental Philosophy, and Logic, in the Presidency College;

Richard Burgass, Esquire, Master of Arts, First Judge of the Court of Small Causes;

Lieutenant-Colonel John Joseph Losh, Military Auditor-General;

William Judsom Vansomeren, Esquire, Doctor in Medicine, Professor of Anatomy and Physiology in the Madras Medical College;

Samuel Jesudasen, Native Surgeon;

Major John Maitland, Superintendent, Gun-carriage Manufactory;

The Reverend A. Burgess;

The Reverend W. Grant,

being the first Chancellor, Vice-Chancellor, and Fellows of the said University, and all the persons who may hereafter become or be appointed to be Chancellor, Vice-Chancellor, or Fellows as hereinafter mentioned, so long as they shall continue to be such Chancellor, Vice-Chancellor, or Fellows are hereby constituted and declared to be one Body Politic and Corporate by the name of the University of Madras; and such Body Politic shall by such name have perpetual succession, and shall have a common seal, and by such name shall sue and be sued, implead and be impleaded, and answer and be answered unto, in every Court of Justice within the territories[1] under the Government of[2] India.[3]

Power to hold and dispose of property.

2. The said Body Corporate shall be able and capable in law to take, purchase, and hold any property, moveable or immoveable, which may become vested in it for the purposes of the said University by virtue of any purchase, grant, testamentary disposition, or otherwise; and shall be able and capable in law to grant, demise, alien, or otherwise dispose of, all or any of the property, moveable or immoveable, belonging to the said University; and also to do all other matters incidental or appertaining to a Body Corporate.

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[1] Here the words "in the possession and," } have been omitted, being
[2] Here the words "the East," } repealed by Act XII. of
[3] Here the word "Company," } 1891, Sch. I.

3. The said Body Corporate shall consist of one Chancellor, one Vice-Chancellor, and such number of *ex-officio* and other Fellows as the Governor of Fort St. George in Council hath already appointed, or shall from time to time, by any order published in the *Fort St. George Gazette*, hereafter appoint; and the Chancellor, Vice-Chancellor, and Fellows for the time being shall constitute the Senate of the said University. Provided that, if any person, being Chancellor, Vice-Chancellor, or Fellow of the said University, shall leave India without the intention of returning thereto, his office shall thereupon become vacant.

Constitution of Body Corporate.

Senate.

Office vacated by leaving India.

4. The Governor of Fort St. George for the time being shall be the Chancellor of the said University.*

Chancellor.

5. The office of Vice-Chancellor shall be held for two years only. Whenever a vacancy shall occur in the office of Vice-Chancellor of the said University by death, resignation, departure from India, effluxion of time, or otherwise, the Governor of Fort St. George in Council shall, by notification in the *Fort St. George Gazette*, nominate a fit and proper person, being one of the Fellows of the said University, to be Vice-Chancellor in the room of the person occasioning such vacancy. Provided that, on any vacancy in the said office which shall occur by effluxion of time, the Governor of Fort St. George in Council shall have power to re-appoint any future Vice-Chancellor to such office.*

Vice-Chancellor.

6. The Chief Justice of Her Majesty's Supreme Court of Judicature, the Bishop of Madras, the Members of the Council of Madras, the Director of Public Instruction, the Principal and Acting Principal of the Presidency College, the President of the Medical College Council, all for the time being, shall, while filling such offices, be *ex-officio* Fellows of the said University. The whole number of the Fellows of the said University, exclusive of the Chancellor and Vice-Chancellor for the time being, shall never be less than thirty; and whenever the number of the said Fellows, exclusive as aforesaid, shall, by death, resignation, departure from India, or otherwise, be reduced below thirty, the Governor of Fort St. George in Council shall forthwith, by notification in the *Fort St. George Gazette*, nominate so many fit and proper persons to be Fellows of the said University, as, with the then Fellows of the said University, shall make the number of such Fellows, exclusive as aforesaid, thirty. But nothing therein contained shall prevent the Governor of Fort St. George in Council from nominating more than thirty persons to be Fellows of the said University if he shall see fit.

Fellows.

7. The Governor of Fort St. George in Council may cancel the appointment of any person already appointed or hereafter to be appointed a Fellow of the University, and as soon as such order is notified in the Gazette, the person so appointed shall cease to be a Fellow.

The appointment of a Fellow may be cancelled.

8. The Chancellor, Vice-Chancellor, and Fellows for the time being, shall have the entire management of, and superintendence over, the affairs, concerns, and property of the said University; and in all cases unprovided for by this Act, it shall be lawful for the Chancellor, Vice-Chancellor, and Fellows to act in such manner as shall appear to them best cal-

Chancellor, Vice-Chancellor, and Fellows to superintend the affairs of the University.

* Certain words, repealed by Act XII. of 1876, have been omitted.

Act XXVII. of 1857.

culated to promote the purposes intended by the said University. The said Chancellor, Vice-Chancellor, and Fellows shall have full power from time to time to make and alter any bye-laws and regulations (so as the same be not repugnant to law or to the general objects and provisions of this Act) touching the examination for degrees and the granting of the same; and touching the examination for honours and the granting of marks of honour for a higher proficiency in the different branches of Literature, Science, and Art; and touching the qualifications of the candidates for degrees and the previous course of instruction to be followed by them, and the preliminary examinations to be submitted to by them; and touching the mode and time of convening the meetings of the Chancellor, Vice-Chancellor, and Fellows; and, in general, touching all other matters whatever regarding the said University. And all such bye-laws and regulations, when reduced into writing, and after the common seal of the said University shall have been affixed thereto, shall be binding upon all persons, members of the said University, and all candidates for degrees to be conferred by the same, provided such bye-laws and regulations shall have been first submitted to, and shall have received the approval of, the Governor of Fort St. George in Council.

Bye-laws.

9. All questions which shall come before the Chancellor, Vice-Chancellor, and Fellows, shall be decided at a meeting of the Senate by the majority of the members present; and the Chairman at any such meeting shall have a vote, and, in case of an equality of votes, a second or casting vote. No question shall be decided at any meeting, unless the Chancellor, or Vice-Chancellor, and five Fellows, or, in the absence of the Chancellor and Vice-Chancellor, unless six Fellows at the least shall be present at the time of the decision. At every meeting of the Senate, the Chancellor, or in his absence the Vice-Chancellor, shall preside as Chairman; and in the absence of both, a Chatrman shall be chosen by the Fellows present, or the major part of them.

Meetings of the Senate.

10. The said Chancellor, Vice-Chancellor, and Fellows for the time being, shall have full power from time to time to appoint, and, as they shall see occasion, to remove, all examiners, officers, and servants of the said University.

Appointment and removal of examiners and officers.

11. The said Chancellor, Vice-Chancellor, and Fellows shall have power, after examination, to confer the several degrees of Bachelor of Arts, Master of Arts, Bachelor of Laws, Licentiate of Medicine, Doctor of Medicine, and Master of Civil Engineering; they shall also have power, after examination, to confer, upon the candidates for the said several degrees, marks of honour for a high degree of proficiency in the different branches of Literature, Science, and Art, according to rules to be determined by the bye-laws to be from time to time made by them under the power in that behalf given to them by this Act.

Power to confer degrees.

12. Except by special order of the Senate, no person shall be admitted as a candidate for the degree of Bachelor of Arts, Master of Arts, Bachelor of Laws, Licentiate of Medicine, Doctor of Medicine, or Master of Civil Engineering, unless he shall present to the said Chancellor, Vice-Chancellor, and Fellows, a certificate from one of the institutions authorized in that behalf by the Governor of Fort St. George in Council, to the effect that he has completed the course of instruction prescribed by the Chancellor, Vice-Chancellor, and Fellows of the said University, in the bye-laws to be made by them under the power in that behalf given by this Act.

Qualification for admission of candidates for degrees.

13. The said Chancellor, Vice-Chancellor, and Fellows shall cause an examination for degrees to be held at least once in every year; on every such examination, the candidates shall be examined either by examiners appointed for the purpose from among the Fellows by the said Chancellor, Vice-Chancellor, and Fellows, or by other examiners so to be appointed; and on every such examination the candidates, whether candidates for an ordinary degree, or for a degree with honours, shall be examined on as many subjects and in such manner as the said Chancellor, Vice-Chancellor, and Fellows shall appoint.

Examination for degrees.

14. At the conclusion of any examination of the candidates, the examiners shall declare the name of every candidate whom they shall have deemed entitled to any of the said degrees, and his proficiency in relation to other candidates; and also the honours which he may have gained in respect of his proficiency in that department of knowledge in which he is about to graduate; and he shall receive from the said Chancellor a certificate, under the seal of the said University of Madras, and signed by the said Chancellor or Vice-Chancellor, in which the particulars so stated shall be declared.

Grant of degrees.

15. The said Chancellor, Vice-Chancellor, and Fellows shall have power to charge such reasonable fees for the degrees to be conferred by them, and upon admission into the said University, and for continuance therein, as they, with the approbation of the Governor of Fort St. George in Council, shall, from time to time, see fit to impose. Such fees shall be carried to one General Fee Fund for the payment of expenses of the said University under the directions and regulations of the Governor of Fort St. George in Council, to whom the accounts of income and expenditure of the said University shall once in every year be submitted for such examination and audit as the said Governor of Fort St. George in Council, may direct.

Fees.

Annual accounts.

ACT XXIX. OF 1857.

Land Customs, Bombay

RECEIVED THE G.-G.'S ASSENT ON THE 11TH SEPTEMBER 1857.

An Act to make better provision for the collection of land-customs on certain foreign frontiers of the Presidency of Bombay.

WHEREAS it is expedient to make better provision for the collection and management of land-customs on certain foreign frontiers of the Presidency of Bombay; It is enacted as follows:—

Preamble.

1. [*Repealed by Act XIV. of 1870.*]

2. [*Repealed by Act XIII. of 1871.*]

3. [*Repealed by Act XI. of 1869.*]

4. For the levy of duties of customs on goods exported by land to, or imported by land from, such foreign territories, customs-stations may be established at such places as may be determined by the Governor in Council.

Customs-stations.

Act XXIX. of 1857.

Appointment of officers.

5. The Governor in Council may appoint such persons as he may deem fit for the control and supervision of the collection and management of the customs payable under this Act as Commissioners and Deputy Commissioners of Customs, or under such other designation as the said Governor in Council shall determine;

and may appoint all other proper persons to execute the duties of the several subordinate offices necessary to the due management and collection of the said customs:

Proviso.

Provided that no new office shall be created without the previous consent of the Governor-General of India in Council.

Government to prescribe roads by which goods may pass.

6. The Governor in Council, may prescribe, by public notice in the official Gazette, by what roads and passes goods shall be allowed to pass into or out of any such foreign territory as is described in sections 2 and 3 of this Act;

and after such notice, goods, which may be brought to any station established on other roads or passes than those so prescribed, shall be detained, and shall be liable to confiscation, unless the person in charge thereof shall be able to satisfy the adjudicating officer that his carrying them by that road or pass was from ignorance or accident.

Goods unlawfully passed across frontier after sunset.

7. Goods unlawfully passed, or attempted to be passed unlawfully, across any frontier guarded by stations, between sunset and sunrise, shall be seized and confiscated.

Written application for permission to pass goods.

8. When goods are brought to be passed at any station established for the levy of duties and passing of goods, a written application, according to a form to be prescribed by the Commissioner of Customs, shall be made by the owner or person in charge, for permission to pass such goods; and such application shall contain a true description of the goods, with the marks, numbers, and description of the packages containing the same, and a declaration of their value.

If any goods shall be passed or attempted to be passed without such an application in writing as is above described, they shall be liable to be seized and confiscated.

Misdescription of goods in application.

9. Goods brought to be passed at any such station shall be liable to confiscation if the packages in which the same may be contained shall on examination be found not to correspond with the description of them given in the application, or if the contents thereof be found not to have been correctly described in regard to sort, quality, or quantity, or if, in or among the packages, any goods not stated in the application be found concealed or mixed up with the specified goods.

Government to fix value of goods for levying duty.

10. The Governor in Council from time to time, by notice in the official Gazette, may fix a value for any article or number of articles liable to duty under this Act upon their value; and the value so fixed for such articles shall, till altered by a similar notice, be taken to be the value of such articles for the purpose of levying duty on the same under this Act.

Duty leviable on certain goods according to market-value.

11. When goods liable to duty, for which a value has not been fixed by such a notice as is above directed, or for which a fixed duty has not been declared, are brought to any such station as aforesaid, the duty leviable on such goods shall be levied according to the market-value of such goods.

12. If the value of any goods, upon which duty is leviable according to the market-value thereof, shall appear to be understated in the declaration of value prescribed in section 8, the officer authorized to receive duties of customs at the station where such goods are brought to be passed shall have power to take the goods, or any part thereof, as purchased for the Government at the price so declared; and whenever he shall so take goods for the Government, payment thereof shall be made for the same within one month from the date of the declaration, and the officer shall sell the goods so taken on account of Government;

Ascertainment of market-value for levy of duty.

and, if they shall realize on sale a sum exceeding all charges incurred on them by Government, a proportion not more than one-half of the excess shall, at the discretion of the Commissioner, be payable to the officer who reported the under-valuation of the goods, who shall, in like manner, be liable to pay one-half of the nett loss that may accrue on the sale of the said goods.

13. No goods liable to duty shall be exempted from the payment of such duty, or of any part thereof, except under special order from the Governor in Council:

Exemptions.

Provided always that any officer authorized to receive duties of customs under this Act may, at his discretion, pass, free of duty, any passenger's personal baggage in actual use; and if any person shall apply to have goods passed as such baggage, such officer, acting under the orders of Government, shall determine whether they be passenger's personal baggage in actual use, or goods subject to duty under the provisions of this Act.

14. When goods are passed at any such station as aforesaid, the officer authorized to receive duties of customs at such station shall grant a certificate of the payment of such duty, or (if the case so require) of the goods having been passed free of duty.

Certificates of payment of duty.

Any officer of customs employed at a station established under this Act may require any person in charge of dutiable goods which have been passed across the frontier to produce the certificate granted for such goods; and any goods which are unaccompanied by a certificate, or which, on examination, do not correspond with the specification contained in the certificate produced, shall be detained, and shall be liable to confiscation.

15. If a certificate be lost by any person to whom it may have been issued by the officer authorized to issue the same, the Commissioner of Customs or other officer duly authorized in that behalf, on being satisfied that no fraud has been committed or was intended, may grant a duplicate of such lost document upon payment of a fee of not less than one rupee nor exceeding ten rupees.

Granting duplicate of lost certificate.

The Commissioner or other officer as aforesaid may also authorize any amendment to be made in any application made under this Act, but, if such amendment be required after such application is entered and recorded in the custom-house books, then upon payment of a like fee for any amendment in a document so entered.

16. Any station-officer who shall permit goods liable to duty to pass across the frontier without payment of duty, or who shall release any goods not covered by a sufficient certificate, or who shall permit such goods to pass by any road or pass other than the prescribed roads or passes, shall be liable, on conviction before a Magistrate, to imprisonment for any term not exceeding six months, or to a fine not exceeding five hundred rupees, or both.

Station-officer permitting goods to pass without payment of duty.

Act XXIX. of 1857.

Vexatious seizure by station-officer.

17. Any station-officer who shall needlessly and vexatiously injure goods under the pretence of examination or in the course of his examination, or who shall wrongfully detain goods for which there is produced a sufficient certificate, shall be liable, on conviction before a Magistrate, to imprisonment for any term not exceeding six months, or to a fine not exceeding five hundred rupees or both.

Obstruction of officers.

18. Whoever intentionally obstructs any officer in the exercise of any powers given by this Act to such officer shall be liable, on conviction before a Magistrate, to imprisonment for any term not exceeding six months, or to a fine not exceeding one thousand rupees, or both.

Offering bribes to officers.

19. Whoever offers a bribe to any officer appointed under this Act, in order to induce such officer to act in a manner inconsistent with his duty, shall be liable, for every such offence, on conviction before a Magistrate, to a fine not exceeding one thousand rupees, or to imprisonment for any term not exceeding six months. or both.

Adjudication of confiscations, &c.

20. In all cases in which, under this Act, goods are liable to confiscation, a Commissioner or Deputy Commissioner of Customs appointed under this Act may adjudicate such confiscation, or the same may be adjudged by an Assistant Commissioner of Customs appointed under this Act being a Justice of the Peace:

Provided that the power to adjudicate confiscation shall not extend, as regards an Assistant Commissioner, to goods beyond the value of one hundred rupees; and all cases adjudicated by an Assistant Commissioner shall be liable to revision by a Commissioner or Deputy Commissioner of Customs on appeal.

Restoration of forfeited goods.

21. In case any goods shall be seized as liable to confiscation, or detained as under-valued, under this Act, the adjudicating officer may order the same to be restored in such manner and on such terms and conditions as he thinks fit to direct; and if the owner of the same accept such terms and conditions, he shall not have or maintain any action for recompense or damage on account of such seizure or detention, and the adjudicating officer shall not proceed to condemnation.

Damages for vexatious seizure.

22. Any officer authorized to adjudicate customs-cases, if he shall decide that a seizure of goods made under the authority of this Act was vexatious and unnecessary, may adjudge damages to be paid to the owner by the officer who made such seizure, beside ordering the immediate release of the goods; and if the owner accepts such damages, no action shall hereafter lie against such officer in any Court of Justice on account of such seizure;

Penalty in mitigation of confiscation.

and if such adjudicating officer shall decide that the seizure was warranted, but shall deem that the penalty of confiscation is unduly severe, he may mitigate the same by levying on the goods so seized as aforesaid any portion of the market-value of such goods not less than one-tenth of such value;

Rewards to customs-officers.

and if the said officer adjudges confiscation, or any penalty in mitigation of confiscation, he may order that, from the sale of the goods, or from the proceeds of any penalty inflicted in mitigation of confiscation, a proportion not exceeding, in all cases of seizure, except seizures of salt or tobacco, one-half of the sum remaining after

payment of all Government-demands, shall be distributed in rewards amongst such officers as he deems entitled thereto, and in such proportion as he directs to each respectively. Act I. of 1858.

In awarding rewards for the seizure of confiscated salt or tobacco, the said officer may award one-half of the proceeds of sale, without making any deduction on account of Government-demands.

ACT I. OF 1858.

RECEIVED THE G.-G.'S ASSENT ON THE 20TH JANUARY 1858.

*An Act to make lawful compulsory labour for the prevention of mischief by inundation, and to provide for the enforcement of customary labour on certain works of irrigation in the Presidency of Fort Saint George.**

Preamble.

WHEREAS the safety of person and property is endangered by inundations caused by sudden breaches of the embankments of tanks, rivers, and canals, and of anicuts and other like works; and it is necessary for the common good to make it obligatory on persons of the labouring classes, when duly called upon, to unite their labour to prevent such breaches, or to repair them instantly; and whereas it is expedient to make legal provision for the enforcement of the duty, which by local custom is incumbent on village communities, to furnish the labour required for the execution of certain works for the purpose of irrigation and drainage; It is enacted as follows :—

Labourers may, in certain cases, be called upon to assist in preventing or repairing breaches in embankments and anicuts.

1. Whenever it shall appear to the officer in charge of any tank, river, or canal, or of any anicut or other like work, that there is imminent danger of the embankment of such tank, river, or canal being breached, or of a breach being made in such anicut or other work, and of a destructive inundation being caused thereby, which may be prevented by a large body of labourers immediately working together to strengthen the embankment or other work; or when such a breach has occurred, if it shall appear to such officer that it can be repaired, and the inundation caused by it be stopped, by the immediate employment of a large body of labourers for that purpose, it shall be lawful for such officer to require the head or heads of the village or villages in the vicinity to call upon all able-bodied male persons of the labouring classes in such village or villages to co-operate in the work necessary for preventing or repairing the breach as the case may be.†

In the absence of the said officer, it shall be lawful for the tahsíldár of the taluq to make such requisition in his stead.

And if neither the said officer nor the tahsíldár is on the spot, and the emergency is great and urgent, it shall be lawful for the head of the village in which the breach is expected to occur or has occurred, of his own motion to call upon the labourers as aforesaid of his own village, and, if needful, to make a requisition to the heads of the neighbouring villages to call likewise upon the labourers of their villages to co-operate in the work necessary for preventing or repairing the breach.

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* Act I. of 1858 has been declared to apply to the whole of the Madras Presidency, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 4.

† 4 M. H. C. R. 21.

Act I. of 1858.

2. Any male person of the labouring classes, being duly called upon by the head of his village to labour as aforesaid, who shall refuse or neglect to comply with such call without any lawful excuse, shall, on conviction before a Magistrate or an officer exercising the ordinary powers of a Magistrate, be punished with a fine which may extend to one hundred rupees, or with simple imprisonment which may extend to one month, or with both.

Punishment for refusing or neglecting to comply with such call.

3. Every person who shall be employed on such work under such requisition shall be paid for his labour by day at the highest rate paid in the neighbourhood for similar work, and, if he is required to work at night, at double such rate.

Rate of remuneration.

4. Payment shall be made to the labourers from the public treasury; and if the labourers shall have been employed upon a work belonging to a private person, the amount advanced from the treasury shall be recoverable from such person by the same means which may be lawfully used for the recovery of arrears of land-revenue.

Mode of payment.

Recovery of advances from private persons.

5. It shall be lawful for heads of villages, on the requisition of the officer in charge of such works as aforesaid, or, in his absence, on the requisition of the tahsíldár, or, in case of emergency, when neither such officer nor the tahsíldár is on the spot, of their own motion, to make requisitions upon the inhabitants of their villages for the supply of materials, to wit, trees and leaves, bamboos, straw, and the like, necessary for stopping breaches in the embankments of tanks, rivers, and canals, and to seize and, if necessary, to cut down such articles wherever they may be found, giving receipts for them in writing;

Villagers may be required to supply certain materials.

such supplies shall be paid for from the public treasury at the highest prices for which such articles are sold in the neighbourhood;

Payment for supplies.

and in case damage is sustained by any person in consequence of the cutting down of any such articles, compensation shall be made for such damage, the amount of which compensation shall, in case of dispute, be determined in the same manner as amounts payable under section six. When the work for which such articles are used belongs to a private person, the amount advanced from the treasury shall be recoverable from him by the same means by which arrears of land-revenue are recoverable.

Compensation for damage.

Recovery of advances from private persons.

6. Whenever by local custom any work for the purpose of irrigation or drainage, or connected therewith, is usually executed by the joint labour of a village community, any person bound by such custom to contribute labour to such work, who neglects or refuses without reasonable cause to comply with a requisition for such customary aid made to him by the head of the village under the orders of the tahsíldár or other superior revenue-officer, shall be liable to pay a sum equal to twice the value of the labour which he is bound to contribute.

Liability of persons refusing to contribute labour to work usually executed by village community.

The amount so payable shall, in case of dispute, be determined summarily by a village* panchâyat assembled by order of the Collector through the village* munsif accord-

Mode of determining amount payable.

* Certain words, repealed by Act XVI. of 1874, have been omitted.

ing to the rules for assembling such panchâyats prescribed in Regulations V. and VII. of 1816.* Act III. of 1858.

Such amount shall be payable on demand; and, on non-payment, the same may be recovered by the same means by which arrears of land-revenue are recoverable.

Recovery.

All sums paid or recovered under this section shall be applicable to the expenses of any works for the purpose of irrigation or drainage executed for the benefit of the village communities to which the defaulters respectively belong.

Appropriation.

ACT III. OF 1858.†

RECEIVED THE G.-G.'S ASSENT ON THE 23RD JANUARY 1858.

An Act to amend the law relating to the arrest and detention of State Prisoners.

WHEREAS doubts have been entertained whether State prisoners confined under Regulation II., 1819, of the Madras Code, or Regulation XXV., 1827, of the Bombay Code, can be lawfully detained in any fortress, jail, or other place within the local limits of the jurisdiction of the Supreme Courts of Judicature at Madras and Bombay

Preamble.

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* So much of this section as relates to Madras Regulation VII. of 1816 was repealed by Act XVI. of 1874.

† Act III. of 1858 has been declared to apply to the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to the Upper Burma Laws Act (XX. of 1886).

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

Sindh	See *Gazette of India.*	Dec. 4, 1880, Pt. I., p. 672.
Aden	Ditto	June 28, 1879, Pt. I., p. 434.
West Jalpaiguri and the Western Dvárs	Ditto	Mar. 5, 1881, Pt. I., p. 74.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	Oct. 22, 1881, Pt. I., p. 504.
The Jhánsí Division	Ditto	Aug. 31, 1878, Pt. I., p. 546.
The scheduled portion of the Mirzápur District	Ditto	May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	May 31, 1879, Pt. I., p. 382.
The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán	Ditto	Jan. 30, 1886, Pt. I., p. 48.
The District of Lahaul	Ditto	May 1, 1886, Pt. I., p. 301.
The Scheduled Districts of the Central Provinces	Ditto	Dec. 13, 1879, Pt. I., p. 771.
The District of Silhat	Ditto	Oct. 4, 1879, Pt. I., p. 631.

It has been extended, under the same Act, to the following Scheduled Districts :—

Kumáon and Garhwál	See *Gazette of India.*	Nov. 4, 1876, Pt. I., p. 605.
The North-Western Provinces Tarái	Ditto	Sep. 23, 1876, Pt. I., p. 505.

Act XXXI. of 1858.

respectively; and it is expedient that such doubts be removed, and that the powers of the said Regulations and of Regulation III., 1818, of the Bengal Code, be extended; It is enacted as follows:—

1. [*Repealed by Act XIV. of 1870.*]

2. The provisions of Regulation III., 1818, of the Bengal Code, Regulation II., 1819, of the Madras Code, and Regulation XXV., 1827, of the Bombay Code, as altered by section 1 of this Act, relating to the arrest and confinement of persons as State prisoners, shall be in force within the local limits of the jurisdiction of the Supreme Courts of Judicature at Calcutta, Madras, and Bombay respectively.*

Regulations as to arrest and confinement of State prisoners in force within Presidency-towns.

3. All powers for the better custody of State prisoners, which, by virtue of Act XXXIV. of 1850, are vested in the Governor-General in Council, shall be possessed and may be exercised by the Governor in Council of Fort St. George and the Governor in Council of Bombay respectively for the better custody of State prisoners arrested within their respective presidencies.

Powers of Governors of Madras and Bombay as to custody of State prisoners.

4. [*Repealed by Act XII. of 1891, Sch. I.*]

5. The Governor-General in Council may order the removal of any State prisoner, confined under the provisions of any of the said Regulations as amended and extended by this Act, from any fortress, jail, or place in which he may be confined within either of the said presidencies, to any other fortress, jail, or place of confinement within the territories[1] under the Government of[2] India.[3]

Removal of State prisoners from one place of confinement to another.

ACT XXXI. OF 1858.†

RECEIVED THE G.-G.'S ASSENT ON THE 24TH AUGUST 1858.

An Act to make further provision for the settlement of land gained by alluvion in the Presidency of Fort William in Bengal.

WHEREAS, for the removal of doubts respecting the course proper to be followed in the settlement of land added by alluvial accession to estates paying revenue to Government, it is expedient to lay down certain rules to be observed in the settlement of such land; It is enacted as follows:—

Preamble.

1. When land added by alluvial accession to an estate paying revenue to Government becomes liable to assessment if it be so agreed on between the Revenue authorities and the proprietor or proprietors, the revenue assessed upon the alluvial land may be added to the jama of the original estate; and in

Addition of revenue as assessed upon alluvial land to jama of original estate.

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* See *Re Amír Khán*, 6 B. L. R. 450.

[1] Here the words "in the possession and," [2] Here the words "the East," [3] Here the word "Company," } have been omitted, having been repealed by Act XII. of 1891, Sch. I.

† Act XXXI. of 1858 has been declared to apply to the whole of Bengal, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 6. It has also been declared in force by Reg. III. of 1872, s. 3, as amended by Reg. III. of 1886, s. 2, in the Santál Parganas, and, under s. 3 of the Scheduled Districts Act (XIV. of 1874), in West Jalpaiguri, the Districts of Hazáribágh, Lohárdaga, and Mánbhum, Pargana Dhálbhum, and the Kolhán. The Act has been repealed in the territories to which the Assam Land and Revenue Regulation, 1886, extends.—See Reg. I. of 1886, s. 2.

such case a new engagement shall be executed for the payment of the aggregate amount, and that amount shall be substituted in the Collector's rent-roll for the former jama of the original estate.

When separate settlement to be made.

If the proprietor or proprietors object to such an arrangement, or if the Revenue-authorities are of opinion that a settlement of the alluvial land cannot properly be made for the same term as the existing settlement of the original estate, the alluvial land shall be assessed and settled as a separate estate with a separate jama, and shall thenceforward be regarded and treated as in all respects separate from and independent of the original estate, whether the separate settlement be made with the proprietor or proprietors, or the land be let in farm in consequence of the refusal of the proprietor or proprietors to accept the terms of settlement.

The separate settlement may be permanent, if the settlement of the original estate is permanent.

Rights of under-tenants in alluvial land.

2. Nothing contained in the preceding section shall affect the rights of any under-tenant in any alluvial land under the provisions of clause 1, section 4, Regulation XI., 1825.

It shall be the duty of all officers making settlements of such land, whether the land be settled separately or incorporated with the original estate, to ascertain and record all such rights according to the rules prescribed in Regulation VII., 1822; and to determine whether any and what additional rent shall be payable in respect of the alluvial land by the person or persons entitled to any under-tenure in the original estate.

The provisions of the said Regulation, so far as the same may be applicable, are hereby declared to extend to all settlements made under this Act.

Separate settlements heretofore made.

3. Every separate settlement of alluvial land heretofore made shall be as good and effectual for the purposes specified in section 1 as the same would have been if made subsequently to the passing of this Act.

Saving of rights.

Provided that nothing contained in this Act shall be held to affect the rights which any person may have acquired, under a judicial decision or otherwise, before the passing of this Act.

ACT XXXIV. OF 1858.

RECEIVED THE G.-G.'S ASSENT ON THE 14TH SEPTEMBER 1858.

*An Act to regulate proceedings in Lunacy in the Courts of Judicature established by Royal Charter.**

Preamble.

WHEREAS the several Courts of Judicature established by Royal Charters within the British territories in India are authorized and empowered by their respective Charters to appoint guardians and keepers of the persons and estates of lunatics, and to enquire into, hear, and determine questions of alleged lunacy by inspection of the person, or by such other ways and means by which the truth may best be discovered and known; and whereas, according to the practice of the said Courts, questions of alleged lunacy are determined by inquisition taken before

* Founded, to some extent, on 16 & 17 Vic., c. 70 (the Lunacy Regulation Act, 1853).

Act XXXIV. of 1858.

a jury, and it is expedient to lessen the cost and to alter the mode of enquiry into such questions, and also to empower the said Courts to make provision for the due management of the estates of lunatics;* It is enacted as follows:—

Court may order enquiry as to persons alleged to be insane.

1. It shall be lawful for any of the said Courts of Judicature, on such application as is hereinafter mentioned, to make an order directing an enquiry whether any person subject to the jurisdiction of the Court, who is alleged to be lunatic, is or is not of unsound mind and incapable of managing himself and his affairs.† The order may also contain directions for other enquiries concerning the nature of the property belonging to the alleged lunatic, the persons who are his relatives or next-of-kin, the time during which he has been of unsound mind, or such other matters as to the Court shall seem proper.

Order may direct enquiry concerning property, &c., of lunatic.

Application by whom to be made.

2. Application for such enquiry may be made by any persons related by blood or marriage to the alleged lunatic, or by the Advocate-General.

Ordinarily, enquiry to be by the Court.

Enquiry by Judge in chambers.

3. The order made by the Court upon such application shall direct the enquiry to be by the Court itself. It shall nevertheless be lawful for the Court, if it see sufficient cause for so doing, to direct the enquiry to be executed in chambers before a single Judge of the Court.

Notice of enquiry to be given to lunatic.

Service of notice.

Reasonable notice of the time and place appointed for the enquiry shall be given to the alleged lunatic. If it shall appear that the alleged lunatic is in such a state that personal service on him would be ineffectual, the Court may direct such substituted service of the notice as it shall think proper. The Court may also, if it think fit, direct a copy of such notice to be served upon any person related by blood or marriage to the alleged lunatic.

Lunatic may demand enquiry before full Court.

If the enquiry be directed to be executed before a single Judge, it shall be lawful for the alleged lunatic, at any time before the day fixed for the enquiry, to demand an enquiry before the full Court. In such case the enquiry shall be by the Court, and a further day shall be appointed for making such enquiry; and in such case the Court may direct such further notices (if any) to be given, as it may think requisite.

Power to require attendance of lunatic for the purpose of being personally examined.

4. The Court may, at any time after the application, require the alleged lunatic to attend at such convenient time and place, within twenty miles of the place of residence of the said lunatic, as it may appoint, for the purpose of being personally examined by the Court or by any person from whom the Court may desire to have a report of the mental capacity and condition of such alleged lunatic.

Power to authorize persons to have access to lunatic.

5. The Court may likewise, at any time after the application for such enquiry, make an order authorizing any person or persons, to be therein named, to have access to the alleged lunatic for the purpose of a personal examination.

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* See Bengal Act IV. of 1870, s. 25.

† *Re Arathoon*, 2 Boulu. 74: *Ridgeway* v. *Darwin*, 8 Ves. 65.

Rules respecting attendance and examination where lunatic is a woman of rank.

6. The attendance and examination of the alleged lunatic under the provisions of the two last preceding sections shall, if the alleged lunatic be a woman who, according to the custom and manners of the country, ought not to be compelled to appear in public, be regulated by the rules in force for the examination of such persons in other cases.

Powers of Judge executing the enquiry.

7. If the enquiry is made by a Judge of the Court, the Judge executing the enquiry shall, while so employed, have power (subject to the provisions of the last preceding section) personally to examine the alleged lunatic, and take such evidence, on oath or otherwise, and call for such information as he may think fit or the said Court may direct, in order to ascertain whether the alleged lunatic is or is not of unsound mind, and shall have the like powers and authority as are or may be vested by law in a Judge or Master of the said Court* for the investigation of matters referred to them by the Court.

Judge to report.

The Judge shall report to the Court the result of the enquiry.

Power to direct enquiry by principal Civil Court of original jurisdiction within whose local jurisdiction lunatic may be.

8. If the alleged lunatic be not within the local limits of the jurisdiction of the Court, and the enquiry cannot conveniently be made in either of the modes hereinbefore provided, the Court may direct the enquiry to be made before any principal Court of original jurisdiction in civil cases within whose local jurisdiction the alleged lunatic may be; and such last-mentioned Court shall accordingly proceed to make such enquiry in the same manner as if the alleged lunatic were subject to its jurisdiction, and shall certify its finding upon the matters of enquiry to the Court directing the enquiry.

The evidence taken upon the enquiry shall be recorded by the Court in the English language in the form of a narrative, and a copy thereof, certified by the Court, shall be transmitted, together with any remarks the Court may think fit to make thereon, to the Court by which the enquiry was directed.

Power to amend report of Judge or finding of Court.

9. If the report of the Judge or the finding of a Court under the last preceding section appear to the Court directing the enquiry to be defective or insufficient in point of form, it shall be lawful for such last-mentioned Court either to amend the same or to refer it back to the Judge or the Court which made the enquiry to be amended.

Court may direct new trial.

10. It shall be lawful for the Court, on the application of the person at whose instance the order directing an enquiry was made, or on the application of the alleged lunatic, or of any of his relatives authorized by the Court to make the application, to direct a new trial of the matters of enquiry according to the usual course and practice of the Court in directing new trials in civil cases. If such application be granted in a case tried by a single Judge, the order granting the same shall direct the enquiry to be made by the full Court. If the application be granted in a case tried under section 8, the Court directing the new trial may give such directions regarding the same as it shall see fit.

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* See Act XVIII. of 1863, s. 5.

Act XXXIV. of 1858.

Costs of enquiry.

11. The Court shall make such order as may appear just respecting the costs of any enquiry under this Act, and may include therein such remuneration to physicians and surgeons as the Court, having regard to the nature of the enquiry, shall deem reasonable.

Finding of Court or report by Judge to be proceeded on, in regard to appointment of committees, as an inquisition.

12. If no new trial be directed, the finding of the Court to which the application for enquiry was made, if the enquiry have been made by such Court, or the report of the Judge, or the finding of the Court to which the enquiry may have been referred under the provisions of section 8, as the case may be, shall be of the same force and effect, and be proceeded on in the same manner in regard to the appointment of committees of the person and estate of the lunatic, as the inquisition now according to practice taken upon the oath of a jury.

On appointment of committee, the Court may give certain powers for management of lunatic's estate.

13. It shall be lawful for the Court, on the appointment of committees of the person and estate of a lunatic, to direct, by the order of appointment, or by any subsequent order, that the person to whom the charge of the estate is committed, shall have such powers for the management thereof as to the Court shall seem necessary and proper, reference being had to the nature of the property, whether moveable or immoveable, of which the estate may consist. But such powers shall not extend to the sale or charge by way of mortgage of the estate or any part thereof, or to the letting of any immoveable property, unless for a term not exceeding three years.

Master to receive proposals concerning management, sale, &c., of estate, without an order of reference.

14. The Master of the Court* shall be at liberty, without an order of reference, to receive any proposal and conduct any enquiry respecting the management of the estate of a lunatic, if such proposal relate to any matter which the committee of the estate has not been empowered by an order under the last preceding section to dispose of. The Master may likewise, without reference, receive and enquire into any proposal relating to the sale or charge by way of mortgage of the estate or of any part thereof, or to the letting of any immoveable property for a term exceeding three years.

Court to make order upon the report of the Master.

15. The Master shall report to the Court on the proposal; and the Court shall, subject to the provisions of this Act, make such order upon the report, and respecting the costs, as shall, under the circumstances, seem just.

Master to determine what relatives to attend proceedings, and appoint guardian of infant relative.

16. The Court or the Master shall once in the matter of each lunacy, and may afterwards from time to time, determine whether any one or more and (if any) how many and which of the relatives or next-of-kin shall attend before the Master, at the cost of the estate, in any proceeding connected with the management thereof; and, if any such relative or next-of-kin is an infant, may, from time to time, appoint a fit person to be his guardian for the purposes of the lunacy.

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* See s. 31, *infra*, and Act XVIII. of 1863, s. 5.

Court may make orders concerning matters connected with lunacy.

17. The Court may, on application made to it by petition concerning any matter whatsoever connected with the lunacy, make such order, subject to the provisions of this Act, respecting the application and the costs thereof, and of the consequent proceedings, as shall, under the circumstances, seem just.

Lunatic's property may be sold for debts, maintenance, &c.

18. The Court may, if it appears to be just, or for the lunatic's benefit, order that any property, moveable or immoveable, of the lunatic, and whether in possession, reversion, remainder, contingency, or expectancy, be sold or charged by way of mortgage, or otherwise disposed of, as may seem most expedient, for the purpose of raising money to be applied for any of the following purposes :—

1. The payment of the lunatic's debts, including any debt incurred for his maintenance or otherwise for his benefit :

2. The discharge of any incumbrance on his estate :

3. The payment of, or provision for, the expenses of his future maintenance and the maintenance of his family, including the expenses of his removal to Europe, when he shall be so removed, and all expenses incidental thereto :

4. The payment of the costs of any enquiry under this Act, and of any costs incurred by order or under the authority of the Court.

Committee to execute conveyances.

19. The committee of the lunatic's estate shall, in the name and on behalf of the lunatic, execute all such conveyances and instruments of transfer relative to any sale, mortgage, or other disposition of his estate as the Court shall order. In like manner

To execute powers.

such committee shall, under the order of the Court, exercise all powers whatsoever vested in a lunatic, whether the same are vested in him for his own benefit or in the character of trustee or guardian.

Court may order performance of contract.

20. Where a person, having contracted to sell or otherwise dispose of his estate or any part thereof, afterwards becomes lunatic, the Court may, if the contract is such as the Court thinks ought to be performed, direct the committee of the estate to execute such conveyances and to do such other acts in fulfilment of the contract as it shall think proper.

Partner found lunatic.

21. If a member of a partnership firm be found lunatic, the Court may, on the application of the other partners, or of any person who appears to the Court to be entitled to require the same, dissolve the partnership ; and thereupon, or upon a dissolution by decree of Court or otherwise by due course of law, the committee of the estate may, in the name and on behalf of the lunatic, join with the other partners in disposing of the partnership property upon such terms, and shall do all such acts for carrying into effect the dissolution of the partnership, as the Court shall think proper.

Disposal of business premises.

22. Where a lunatic has been engaged in business, the Court may, if it appear to be for the lunatic's benefit that the business premises should be disposed of, order the committee of the estate to sell and dispose of the same ; and the moneys arising from such sale shall be applied in such manner as the Court shall direct.

Act XXXIV. of 1858.

Committee may dispose of lease.

23. Where a lunatic is entitled to a lease or under-lease, and it appears to be for the benefit of his estate that it should be disposed of, the committee of the estate may, by order of the Court, surrender, assign, or otherwise dispose of, the same to such person for such valuable or nominal consideration, and upon such terms, as the Court shall think fit.

When Court of Wards may assume charge of lunatic's land.

24. If a lunatic is possessed of any landed property situate beyond the local limits of the jurisdiction of the Court which, by the law in force in the presidency wherein such land is situated, subjects the proprietor, if disqualified, to the superintendence of the Court of Wards, the said Court of Wards may assume the charge of such landed property, and manage the same according to the rules for the time being in force for such management.

Proviso.

Provided that, in such case, no further proceedings in respect of the lunacy shall be taken under any such law, nor shall it be competent to the Court of Wards or to any Collector to appoint a guardian of the person of the said lunatic or a manager of the estate except of the landed property which so subjects the proprietor as aforesaid.

Disposal of surplus income of land.

Provided also that the surplus of the income of such landed property, after providing for the discharge of the Government revenue and expenses of management, shall be disposed of from time to time in such manner as the Supreme Court shall direct, and not otherwise.

This section not to affect certain powers given to Supreme Court by ss. 18, 19, 20.

Provided further that nothing contained in this section shall affect the powers given to the Supreme Court by sections 18, 19, and 20 of this Act, or (except so far as relates to the management of the said landed property which so subjects the proprietor as aforesaid) the powers given by any other section of this Act.

Stock transferable in India, belonging to lunatic, may be ordered to be transferred.

25. Where any stock or Government securities or any share in a Company (transferable within the said territories or the dividends of which are payable there) is standing in the name of, or is vested in, a lunatic beneficially entitled thereto, or in a committee of the estate of a lunatic, or in a trustee for him, and the committee dies intestate, or himself becomes lunatic, or is out of the jurisdiction of the Court, or it is uncertain whether the committee be living or dead, or he neglects or refuses to transfer the stock, securities, or shares, or to receive and pay the dividends to a new committee or as he directs, within fourteen days after being required by him to do so, then the Court may order some fit person to make such transfer, or to transfer the same, and to receive and pay over the dividends in such manner as the Court may direct, and such transfer or payment shall be valid and effectual for all purposes.

Stock of lunatic, residing out of India, and not within the United Kingdom, may be ordered to be transferred.

26. Where any such stock or Government securities or share in a Company is standing in the name of, or vested in, any person residing out of the said territories, and not in any part of the United Kingdom, the Court, upon being satisfied that such person has been declared of unsound mind, and that his personal estate has been vested in a curator or manager, according to the laws of the place where he is residing, may order some fit person to make such transfer of the stock, securities, or shares, or of any part

thereof, to such curator or manager or otherwise, and also to receive and pay over the dividends and proceeds, as the Court may think fit; and any act done in pursuance of such order shall be valid and effectual for all purposes.

Power to apply property for lunatic's maintenance without appointing committee.

27. If it appears to the Court, having regard to the situation and condition in life of the lunatic and his family and the other circumstances of the case, to be expedient that his property should be made available for his or their maintenance in a direct and inexpensive manner, it may, instead of appointing a committee of the estate, order that the property if money, or if of any other description, the produce thereof, when realized, be paid to such person as the Court may think fit, to be applied for the purpose aforesaid; and all payments so made shall be a good discharge to the person making the same.

Like power in case of temporary lunacy.

28. If it appears to the Court that the unsoundness of mind of a lunatic is in its nature temporary, and that it is expedient to make temporary provision for his maintenance or for the maintenance of his family, the Court may, in like manner as under the last preceding section, direct his property or a sufficient part of it to be applied for the purpose aforesaid.

Proceedings in lunacy to cease or be set aside if Court find that the unsoundness of mind has ceased.

29. When any person has been found of unsound mind, and it shall be shown to the Court, either on the application of such person or of any other person acting on his behalf, or on the information of any other person, that there is reason to believe that such unsoundness of mind has ceased, the Court may make an order for enquiry whether such person is or is not still of unsound mind and incapable of managing himself and his affairs.

The enquiry shall be conducted in the same manner and subject to the same rules as are hereinbefore prescribed for an enquiry into the unsoundness of mind of an alleged lunatic; and if it be found that the unsoundness of mind has ceased, the Court shall order all proceedings in the matter of the lunacy to cease or to be set aside on such terms and conditions as under the circumstances of the case shall appear proper.

Power to make general orders.

30. The Court may, from time to time, make such orders, not inconsistent with the provisions of this Act, as shall seem meet for carrying into effect the purposes of this Act, and for regulating the mode of proceeding before the Court, or before a Judge of the Court, or the Master, in matters of lunacy.

Powers of Master exercisable by Judge.

31. Every power given by this Act to the Master of any of the said Courts may also be exercised by a Judge of any of the said Courts.

Interpretation-clause.

32. Unless the contrary appears from the context, the word "lunatic," as used in this Act, shall mean any person found by due course of law to be of unsound mind and incapable of managing his affairs. Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular. Words importing the masculine gender shall include females.

Act XXXV. of 1858.

ACT XXXV. OF 1858.*

RECEIVED THE G.-G.'S ASSENT ON THE 14TH SEPTEMBER 1858.

An Act to make better provision for the care of the Estates of Lunatics not subject to the jurisdiction of the Supreme Courts of Judicature.

Preamble.

WHEREAS it is expedient to make better provision for the care of the estates of lunatics not subject to the jurisdiction of the Supreme Courts of Judicature; and to prescribe general rules by which the state of mind of persons not subject to such jurisdiction, who are alleged to be lunatic, may be enquired into and ascertained; It is enacted as follows:—

1. [*Repealed by Act XIV. of 1870.*]

Power to institute enquiry when possessor of property is alleged to be lunatic.

2. Whenever any person not subject to the jurisdiction of the Supreme Courts, who is possessed of property, is alleged to be a lunatic, the Civil Court within whose jurisdiction such person is residing,† may, upon such applica-

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* Act XXXV. of 1858 has been declared to be in force in the whole of the British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh	See *Gazette of India*	Dec. 4, 1880, Pt. I., p. 672.
West Jalpáiguri and the Western Dvárs	Ditto	Mar. 5, 1881, Pt. I., p. 74.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	Oct. 22, 1881, Pt. I., p. 504.
The Jhánsí Division	Ditto	Aug. 31, 1878, Pt. I., p. 546.
The scheduled portion of the Mirzápur District	Ditto	May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	May 31, 1879, Pt. I., p. 382.
The Districts of Hazára, Peshawár, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán	Ditto	Jan. 30, 1886, Pt. I., p. 48.
The District of Lahaul	Ditto	May 1, 1886, Pt. I., p. 301.
The Scheduled Districts of the Central Provinces	Ditto	Dec. 13, 1879, Pt. I., p. 771.
The District of Silhat	Ditto	Oct. 4. 1879, Pt. I., p. 631.
The Districts of Kamrup, Naugong, Darrang, Sibsagár, Lakhimpur, Goalpárá (excluding the Eastern Dvárs), and Káchar (excluding the North Káchár Hills)	Ditto	Aug. 24, 1878, Pt. I., p. 533.

It has been extended, under the same Act, to the following Scheduled Districts:—

Kumáon and Garhwál	See *Gazette of India*	Nov. 4, 1876, Pt. I., p. 606.
The North-Western Provinces Tarái	Ditto	Sep. 23, 1876, Pt. I., p. 505.
Ajmere and Merwára	Ditto	June 22, 1878, Pt. I., p. 380.

† 2 B. L. R., A. C. J., 246.

tion as is hereinafter mentioned, institute an enquiry for the purpose of ascertaining whether such person is or is not of unsound mind and incapable of managing his affairs.

Who may apply for enquiry.

3. Application for such enquiry* may be made by any relative of the alleged lunatic, or by any public curator appointed under Act XIX. of 1841,† or by the Government pleader, or if the property of the alleged lunatic consist in whole or in part of land or any interest in land, by the Collector of the district in which it is situate.

If the property or any part thereof be of such a description as by the law in force in any presidency where such property is situate would subject the proprietor, if disqualified, to the superintendence of the Court of Wards, the application may be made by the Collector on behalf of the Court of Wards.

Notice of enquiry to be given to lunatic.
Service of notice.

4. When the Civil Court is about to institute any such enquiry as aforesaid, it shall cause notice to be given to the alleged lunatic of the time and place at which it is proposed to hold the enquiry. If it shall appear that the alleged lunatic is in such a state that personal service on him would be ineffectual, the Court may direct such substituted service of the notice as it shall think proper. The Court may also direct a copy of such notice to be served upon any relative of the alleged lunatic.

Power to require attendance of lunatic.

5. The Civil Court may require the alleged lunatic to attend at such convenient time and place as it may appoint for the purpose of being personally examined by the Court or by any person from whom the Court may desire to have a report of the mental capacity and condition of such alleged lunatic.‡

Power to authorize access to lunatic.

The Court may likewise make an order authorizing any person or persons therein named to have access to the alleged lunatic for the purpose of a personal examination.

Rules respecting attendance and examination where lunatic is a woman of rank.

6. The attendance and examination of the alleged lunatic under the provisions of the last preceding section shall, if the alleged lunatic be a woman who, according to the manners and customs of the country, ought not to be compelled to appear in public, be regulated by the rules in force for the examination of such persons in other cases.

Appointment of assessors.

7. The Civil Court, if it think fit, may appoint two or more persons to act as assessors to the Court in the said enquiry.

Order of Court.

Upon the completion of the enquiry, the Court shall determine whether the alleged lunatic is or is not of unsound mind, and may make such order as to the payment of the costs of the enquiry by the person upon whose application it was made, or out of the estate of the alleged lunatic if he be adjudged to be of unsound mind, or otherwise, as it may think proper.

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* The application must be verified, 7 Suth. W. R., C. R., 267.

† See *supra*, p. 38.

‡ See 7 Suth. W. R., C. R., 246.

Act XXXV. of 1858.

Issue of commission to subordinate Court.

8. If the alleged lunatic reside at a distance of more than fifty miles from the place where the Civil Court to which the application shall have been made is held, the said Court may issue a commission to any subordinate Court to make the enquiry, and thereupon the said subordinate Court shall conduct the enquiry in the manner hereinbefore provided.

Report of subordinate Court. Order of Civil Court.

On the completion of the enquiry, the subordinate Court shall report its proceedings with the opinions of the assessors, if assessors have been appointed, and its own opinion on the case; and thereupon the Civil Court shall make such order in the case as it may think proper.*

Management of lunatic's estate, if consisting of property subject to Court of Wards.

9. When a person has been adjudged to be of unsound mind and incapable of managing his affairs, if the estate of such person or any part thereof consist of property which, by the law in force in any presidency, subjects the proprietor, if disqualified, to the superintendence of the Court of Wards, the Court of Wards shall be authorized to take charge of the same.

Manager in other cases.

In all other cases, except as otherwise hereinafter provided, the Civil Court shall appoint a manager of the estate. Any near relative of the lunatic, or the public curator, or, if there be no public curator, any other suitable person, may be appointed manager.†

Appointment of guardian by Civil Court.

10. Whenever a manager of the estate of a lunatic is appointed by the Civil Court, the Court shall appoint a fit person to be guardian of the person of the lunatic. The manager, unless he be the public curator, may be appointed guardian. Provided always that the legal heir of the lunatic shall not in any case be appointed guardian of his person.

Charge of lunatic's estate if consisting of land not subject to Court of Wards.

11. If the estate consist in whole or in part of land or any interest in land not subject to the jurisdiction of the Court of Wards, the Civil Court, instead of appointing a manager, may direct the Collector to take charge of the estate, and thereupon the Collector shall appoint a manager of the property and a guardian of the person of the lunatic.

Control of Collector's proceedings.

All the proceedings of the Collector in the charge of estates under this Act shall be subject to the control of the superior revenue authorities.‡

Remuneration of managers and guardians.

12. If the person appointed to be manager of the estate of a lunatic, or the person appointed to be guardian of a lunatic's person, shall be unwilling to discharge the trust gratuitously, the Court or the Collector, as the case may be, may fix such allowance or allowances to be paid out of the estate of the lunatic as, under the circumstances of the case, may be thought suitable.

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* The Act contemplates only the question of lunacy or sanity at the time of the inquiry. There is no provision that the inquiry shall extend to the ascertainment of the period at which the alleged lunatic first became of unsound mind.—*Ajodhya Prasad Singh* v. *Umrao Singh*, 6 B. L. R. 509, 517.

† See 4 B. L. R. App. 24.

‡ Repealed in the Lower Provinces of Bengal by Ben. Act IX. of 1879.

13. The person appointed to be guardian of a lunatic's person shall have the care of his person and maintenance. When a distinct guardian is appointed, the manager shall pay to the guardian such allowance as shall be fixed by the Court or the Collector, as the case may be, for the maintenance of the lunatic and of his family.

Duties of guardian.

14. Every manager of the estate of a lunatic appointed as aforesaid may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a lunatic, and may collect and pay all just claims, debts, and liabilities due to or by the estate of the lunatic. But no such manager shall have power to sell or mortgage the estate or any part thereof, or to grant a lease of any immoveable property for any period exceeding five years, without an order of the Civil Court previously obtained.

Powers of managers.

15. Every person appointed by the Civil Court or by the Collector to be manager of the estate of a lunatic shall, within six months from the date of his appointment, deliver in Court or to the Collector, as the case may be, an inventory of the landed property belonging to the lunatic, and of all such sums of money, goods, and effects, as he shall receive on account of the estate, together with a statement of all debts due by or to the same. And every such manager shall furnish to the Court or to the Collector annually, within three months of the close of the year of the era current in the district, an account of the property in his charge, exhibiting the sums received and disbursed on account of the estate, and the balance remaining in his hands.

Managers to furnish inventory and annual accounts.

If any relative of the lunatic, or any public officer, by petition to the Court, shall impugn the accuracy of the said inventory and statement, or of any annual account, the Court may summon the manager, and enquire summarily into the matter, and make such order thereon as it shall think proper; or the Court, at its discretion, may refer any such petition to any subordinate Court or to the Collector if the manager was appointed by the Collector.

Proceeding if accuracy of inventory or accounts be impugned.

16. All sums received by a manager on account of any estate in excess of what may be required for the current expenses of the lunatic or of the estate shall be paid into the public treasury on account of the estate, and may be invested from time to time in the public securities.

Manager to pay proceeds of estates into the public treasury.

17. It shall be lawful for any relative of a lunatic to sue for an account from any manager appointed under this Act, or from any such person after his removal from office or trust, or from his personal representative in case of his death, in respect of any estate then or formerly under his care or management, or of any sums of money or other property received by him on account of such estate.

Relative may sue for an account.

18. The Civil Court, for any sufficient cause, may remove any manager appointed by the Court, not being a public curator, and may appoint such curator or any other fit person in his room, and may compel the person so removed to make over the property in his hands to his successor, and to account to such successor for all moneys received or disbursed by him. The Court may also, for any sufficient cause, remove any guardian appointed by the Court.

Removal of manager or guardian by Civil Court.

Act XXXV. of 1858.

Removal by Collector.

In like manner, the Collector, for any sufficient cause, may remove any manager or guardian appointed by the Collector; and the Court, on the application of the Collector, shall compel any manager so removed to deliver his accounts and the property in his hands.

Manager refusing to furnish accounts may be fined by the Court, &c.

19. The Civil Court may impose a fine not exceeding five hundred rupees on any manager of the estate of a lunatic who wilfully neglects or refuses to deliver his accounts or any property in his hands within the prescribed time or a time fixed by the Court, and may realize such fine by attachment and sale of his property under the rules in force for the execution of decrees of Court, and may also commit the recusant to close custody until he shall deliver such accounts or property.

When Court may apply property for lunatic's maintenance without appointing manager.

20. If it appears to the Civil Court, having regard to the situation and condition in life of the lunatic and his family, and the amount and description of his property, to be unnecessary to appoint a manager of the estate as hereinbefore provided, the Court may, instead of appointing such manager, order that the property if money, or if of any other description the produce thereof, when realized, be paid to such person as the Court may think fit to be applied for the maintenance of the lunatic and his family.

Court may institute enquiry to ascertain whether a person has ceased to be of unsound mind.

21. When any person has been adjudged to be of unsound mind and incapable of managing his affairs, if such person, or any other person acting on his behalf, or having or claiming any interest in respect of his estate, shall represent by petition to the Civil Court, or if the Court shall be informed in any other manner, that the unsoundness of mind of such person has ceased, the Court may institute an enquiry for the purpose of ascertaining whether such person is or is not still of unsound mind and incapable of managing his affairs.

And may order estate to be restored.

The enquiry shall be conducted in the manner provided in section 4 and the four following sections of this Act; and if it be adjudged that such person has ceased to be of unsound mind and incapable of managing his affairs, the Court shall make an order for his estate to be delivered over to him, and such order shall be final.

Orders appealable.

22. Except as otherwise herein provided, all orders made by a Civil Court or by any subordinate Court under this Act shall be open to appeal under the rules in force for appeals in miscellaneous cases.

Interpretation-clause.

23. The word "lunatic," as used in this Act, unless the contrary appears from the context, shall mean every person found by due course of law to be of unsound mind and incapable of managing his affairs. The expression "Civil Court" shall mean the principal Court of original jurisdiction in the district. Words importing the masculine gender shall include females.

ACT XXXVI. OF 1858.*

Act XXXVI. of 1858.

RECEIVED THE G.-G.'S ASSENT ON THE 14TH SEPTEMBER 1858.

An Act relating to Lunatic Asylums.

WHEREAS it is expedient to provide for the reception and detention of lunatics in asylums established for that purpose; It is enacted as follows :—

Preamble.

1. The Executive Government of any Presidency or place, with the sanction of the Governor-General of India in Council, may establish asylums for the reception and detention of lunatics at such places within the limits of the said Government as may be deemed proper.

Lunatic asylums may be established by Government,

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* Act XXXVI. of 1858 is founded, to some extent, on 16 and 17 Vic., c. 96. It has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

Sindh	See *Gazette of India*.	Aug. 10, 1878, Pt. I., p. 482.
The Taluqs of Bhádrachálam and Rakapilli and the Rampa Country	Ditto	Oct. 4, 1879, Pt. I., p. 630.
West Jalpaiguri, the Western Dvárs, the Western Hills of Dárjiling, and the Damson Sub-division of the Dárjiling District	Ditto	Mar. 5, 1881, Pt. I., p. 74.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	Oct. 22, 1881, Pt. I., p. 504.
The Jhánsí Division	Ditto	Aug. 31, 1878, Pt. I., p. 546.
The scheduled portion of the Mirzápur District	Ditto	May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	May 31, 1879, Pt. I., p. 382.
The Districts of Hazára, Peshá-war, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán.	Ditto	Jan. 30, 1886, Pt. I., p. 48.
The District of Lahaul . . .	Ditto	May 1, 1886, Pt. I., p. 301.
The Scheduled Districts of the Central Provinces	Ditto	Dec. 13, 1879, Pt. I., p. 771.
The Districts of Kámrup, Naugong, Darrang, Sibságar, Lakhimpur, Goálpárá (including the Eastern Dvárs), and Káchár (excluding the North Káchár Hills).	Ditto	Aug. 24, 1878, Pt. I., p. 533.
The District of Silhat . . .	Ditto	Oct. 4, 1879, Pt. I., p. 631.

It has been extended, under the same Act, to the following Scheduled Districts :—

Kumáon and Garhwál . . .	See *Gazette of India*.	Nov. 4, 1876, Pt. I., p. 606.
The North-Western Provinces Tarái	Ditto	Sep. 23, 1876, Pt. I., p. 505.
Ajmere and Merwára	Ditto	June 22, 1878, Pt. I., p. 380.

Act XXVI. of 1858.

Any such Executive Government may also, if it think fit, grant licenses to any private persons for the establishment of such asylums within the said limits, and may withdraw such licenses.

or may be licensed.

2. The management of every lunatic asylum, and the care and custody of its inmates, shall be regulated according to such rules as shall, from time to time, be sanctioned by the Executive Government.

Management of asylums.

The Executive Government shall appoint for every asylum not less than three visitors, one of whom at least shall be a medical officer. The inspector of jails (where such office exists) shall be a visitor *ex-officio* of all the asylums within the circle of his inspection.

Appointment of visitors.

3. Two or more of the visitors, one of whom shall be a medical officer, shall, once at the least in every month, together inspect every part of the asylum or asylums of which they are visitors, and see and examine, as far as circumstances will permit, every lunatic therein, and the order and certificate for the admission of every lunatic admitted since the last visitation of the visitors; and shall enter in a book to be kept for that purpose any remarks which they may deem proper in regard to the management and condition of the asylum and the lunatics therein.

Monthly inspection by visitors.

4. It shall be the duty of every dárogha or district police-officer to apprehend, and send to the Magistrate, all persons found wandering at large within his district who are deemed to be lunatics, and all persons believed to be dangerous by reason of lunacy.

Wandering and dangerous lunatics to be sent to the Magistrate.

Whenever any such person as aforesaid is brought before a Magistrate, the Magistrate, with the assistance of a medical officer, shall examine such person; and if the medical officer shall sign a certificate in the form (A) in the schedule to this Act, and the Magistrate shall be satisfied, on personal examination or other proof, that such person is a lunatic, and a proper person to be detained under care and treatment, he shall make an order for such lunatic to be received into the asylum established for the division in which the Magistrate's jurisdiction is situate, or, if such lunatic is not a native of the country, and the circumstances of the case so require, into a lunatic asylum at the Presidency; and shall send the lunatic in suitable custody to the asylum mentioned in such order:

Certificate and order for reception in asylum.

Provided that, if any friend or relative of any lunatic, who is believed to be dangerous, shall undertake in writing, to the satisfaction of the Magistrate, that such lunatic shall be properly taken care of, and shall be prevented from doing injury to himself or others, the Magistrate, instead of sending him to an asylum, may make him over to the care of such friend or relative:

When lunatic may be committed to the care of his friends or relatives,

Provided also that, if any such friend or relative shall desire that the lunatic may be sent to a licensed asylum instead of the public asylum of the division, and shall engage in writing to the satisfaction of the Magistrate to pay the expenses which may be incurred for the lodging, maintenance, medicine, clothing, and care of the lunatic in such asylum, the Magistrate may send the lunatic to the licensed asylum mentioned in the engagement.

or sent to licensed asylum.

5. If it shall appear to the Magistrate, on the report of a police-officer or the information of any other person, that any person within the limits of his jurisdiction, deemed to be a lunatic, is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the charge of him, the Magistrate may send for the supposed lunatic, and summon such relative or other person as has or ought to have the charge of him; and if such relative or other person be legally bound to maintain the supposed lunatic, the Magistrate may make an order for such lunatic being properly cared for and treated, and, if such relative or other person shall wilfully neglect to comply with the said order, may commit him to jail for a period not exceeding one month.

In case of neglect or cruel treatment, Magistrate may order person bound to maintain lunatic, to provide for his proper treatment.

If there be no person legally bound to maintain the supposed lunatic, or, if the Magistrate think fit so to do, he may proceed as prescribed in the last preceding section, and, upon being satisfied in manner aforesaid that the person deemed to be a lunatic is a lunatic, and a proper person to be detained under care and treatment, may make an order for his reception into such asylum as aforesaid.

If no person bound to maintain him, Magistrate may make an order for his reception in asylum.

It shall be the duty of every dárogha or district police-officer to report to the Magistrate every such case of neglect or cruel treatment as aforesaid which may come to his knowledge.

Dárogha to report neglect.

6.* All acts which the Magistrate is authorized or required to do by the two last preceding sections may be done in the Presidency-towns by the Commissioner of Police; and all duties which a dárogha or district police-officer is authorized or required to perform may be performed in any of the said towns by an officer of the police-force not below the rank of inspector.

Commissioner of Police, &c., to act in the Presidency-towns.

6A. (*1*) Where a person found wandering at large who is deemed to be a lunatic, or where a person believed to be dangerous by reason of lunacy is apprehended and sent to the Magistrate or Commissioner of Police, or where, on report or information that a person deemed to be a lunatic is not under proper care and control, or is cruelly treated or neglected, the Magistrate or the Commissioner of Police sends for him, and then determines to proceed as prescribed in section 4 of this Act, the Magistrate or the Commissioner of Police, on the request of the medical officer, may, by order in writing, authorize the detention of the supposed lunatic for such time, not exceeding ten days, as, in the opinion of the Magistrate or the Commissioner of Police, may be necessary to enable the medical officer to form an opinion on the question whether or not the supposed lunatic is a person with respect to whom a certificate in the form A in the schedule to this Act ought to be signed.

Detention of supposed lunatics under observation.

(*2*) If the medical officer certifies further detention than has been authorized under sub-section (*1*) to be necessary to enable him to form his opinion on that question, the Magistrate or the Commissioner of Police may from time to time, by order in writing, authorize such further detention as he deems to be necessary:

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* Certain words referring to the Straits Settlements, which were repealed by Act XVI. of 1874, have been omitted.

Act XXXVI. of 1858.

Provided that a supposed lunatic shall not be detained for the purpose of this section for a longer time than fourteen days from the date on which the first order authorizing his detention for that purpose is made.

(3) The Executive Government may, from time to time, make rules as to the place of detention, and the care and treatment, of supposed lunatics detained under this section.*

Order and certificate for reception into Presidency asylum.

7. Except as otherwise hereinbefore provided, no person shall be received into a lunatic asylum in any Presidency-town† without an order under the hand of some person in the form (B) in the schedule to this Act, together with such statement of particulars as is contained in the said form (B); nor unless such person has been found lunatic by inquisition or under an enquiry directed by an order of one of the Courts of Judicature established by Royal Charter, without the medical certificate, containing the particulars in form (A) in the schedule to this Act, of two persons each of whom shall be a physician or surgeon, and one of whom shall be a Presidency surgeon or a surgeon in the employment of the Government.

When such order is presented, the visitors or manager of the asylum, before admitting the lunatic into the asylum, may require the friends of the said lunatic to engage to pay the expenses which may be incurred for the lodging, maintenance, clothing, medicine, and care of the lunatic, unless it shall appear to the said visitors that they have not sufficient means of doing so.

Reception in mofussil asylum.

8. *Clause 1.*—In places other than those specified in the last preceding section, no person shall be received into a lunatic asylum, except as otherwise hereinbefore provided, without an order of the Civil Court.

Application for order to be made by guardian, if guardian appointed.

Clause 2.—When any person has been adjudged to be a lunatic, and a guardian for such lunatic has been appointed by the Court of Wards or the Collector, or by the Civil Court, if such guardian shall desire that the lunatic be admitted into a lunatic asylum, he shall make application to the Civil Court, and the Judge, with the assistance of a medical officer, shall examine such lunatic, and if the medical officer shall sign a certificate in the form (A) in the schedule to this Act, and the Judge shall be satisfied that the lunatic is a proper person to be detained under care and treatment in a lunatic asylum, he shall make an order for such person to be received into the asylum established for the division in which his jurisdiction is situate, or, if he think fit, into any licensed asylum mentioned in the application.

Application where no guardian appointed.

Clause 3.—If any relative or friend of any person, for whom a guardian has not been appointed by the Court of Wards or the Collector or by the Civil Court, desires that such person may be admitted into a lunatic asylum, he may make application to the Civil Court, and the Judge, if he see sufficient reason for so doing, shall enquire into the fact of lunacy in the same manner as if an application had been made to the Civil Court under the provisions of section 3 of Act XXXV. of 1858, entitled "*An Act to make better provision for the care of the estates of lunatics not subject to the jurisdiction of the Supreme Courts of Judicature,*" and if the lunacy be established, the Judge may then proceed in the manner prescribed in the second clause of this section.

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* S. 6A has been inserted by Act XVIII. of 1886, s. 1.

† Certain words referring to the Straits Settlements, which were repealed by Act XVI. of 1874, have been omitted.

Clause 4.—Whenever the Judge shall make an order for the reception of any person into a lunatic asylum, he shall, at the same time, make an order for the payment of the expenses to be incurred for the lodging, maintenance, clothing, medicine, and care of such person; and such expenses shall be recovered by the Judge on the application of the visitors or manager of such asylum. Provided, however, that if it shall appear to the satisfaction of the Judge that the lunatic has not sufficient property, and that no person legally bound to maintain the said lunatic has sufficient means for the payment of such expenses, he shall certify the same in the order for the reception of the lunatic into the asylum, instead of making such order for the payment of expenses as aforesaid.

Order for payment of expenses.

Proviso.

9. "Subject to the provisions of any enactment for the time being in force,"* it shall be lawful for three of the visitors of any asylum, of whom one shall be a medical officer, by writing under their hands, to order the discharge of any person detained in such asylum. When such order is given, if the person is detained under the order of any public officer, notice of the order of discharge shall be immediately communicated to such officer.†

Order of discharge from asylum.

10. When any relative or friend of a lunatic detained in any asylum under the provisions of section 4, section 5, or section 6 of this Act, is desirous that such lunatic shall be delivered over to his care and custody, he shall make application to the Magistrate or Commissioner of Police under whose order the lunatic is detained, and the Magistrate or Commissioner of Police, if he think fit, after communication with the visitors or with one of them being a medical officer, and upon the undertaking in writing of such relative or friend to the satisfaction of the said Magistrate or Commissioner that such lunatic shall be properly taken care of, and shall be prevented from doing injury to himself or others, shall make an order for the discharge of such lunatic, and such lunatic shall thereupon be discharged.

Order of discharge on undertaking of relative for due treatment of the lunatic.

11. [*Repealed by Act XX. of 1889.*]

12. If, after the reception of any lunatic into any asylum, it appear that the order or the medical certificate or certificates upon which he was received is or are defective or incorrect, the same may at any time afterwards be amended by the person or persons signing the same with the sanction of two or more of the visitors of the said asylum, one of whom shall be a medical officer.

Amendment of order or certificate.

13. Every person received into a lunatic asylum under any such order as is required by this Act, accompanied by the requisite medical certificate, may be detained therein until he be removed or discharged as authorized by this Act, and in case of escape may, by virtue of such order, be retaken by the manager of such asylum, or any officer or servant belonging thereto, or any other person authorized in that behalf by the said manager, or any police-officer, and conveyed to, and received and detained in, such asylum.

Order and certificate to justify detention and recapture after escape.

14. When any lunatic is sent to a licensed asylum by order of a Magistrate or Commissioner of Police under section 4, section 5, or section 6 of this Act, and when a lunatic is admitted into such asylum under section 7, or an order for the reception of a

Government when to pay for lunatic's maintenance.

* The words quoted have been prefixed by Act XVIII. of 1886, s. 2.

† The provisions of this section have been applied to prisoners in lunatic asylums.—See Act V. of 1871, s. 31.

Act XXXVI. of 1858.

lunatic is made under section 8, and no engagement has been taken from the friends of the lunatic or order made by the Judge for the payment of expenses under the said section 7 or section 8 respectively, the expense of the lodging, maintenance, clothing, medicine, and care of such lunatic shall be paid by the Government to the manager of such asylum.

Order for payment of cost of lunatic's maintenance.

15. The Magistrate or Commissioner of Police by whom any lunatic has been sent to a lunatic asylum, if it appear to such Magistrate or Commissioner that such lunatic has an estate applicable to his maintenance and more than sufficient to maintain his family, or that any person is legally bound to maintain and has the means of maintaining such lunatic, may apply to the chief Civil Court of original jurisdiction within the local jurisdiction of which the estate of the lunatic may be situate, or the person legally bound to maintain him may reside, and such Court shall enquire into the matter in a summary way, and on being satisfied that such lunatic has an estate applicable to his maintenance, or that any person is legally bound to maintain and has the means of maintaining such lunatic, shall make an order for the recovery of the charges of the lodging, maintenance, clothing, medicine, and care of such lunatic out of such estate or from such person.

Enforcement, &c., of order.

Such order shall be enforced in the same manner, and shall be of the same force and effect, and subject to the same appeal, as any judgment or order made by the said Court in a regular suit in respect of the property or person therein mentioned.

Property in possession of vagrant lunatic.

Any personal property which may be in the possession of a lunatic found wandering at large may be sold by the Magistrate, and the proceeds thereof (or such part of the same as may be necessary) applied towards the payment of the charges of the lodging and maintenance of the lunatic, and of any other expenses incurred on his behalf.

Relatives' liability to maintain lunatic.

16. The liability of any relative or person to maintain any lunatic shall not be taken away or affected by any provision contained in this Act.

Saving of powers of Supreme Courts.

17. Nothing contained in this Act shall be taken to interfere with the power of any of the Courts of Judicature established by Royal Charter over any person found to be lunatic by inquisition or under the provisions of Act XXXIV. of 1858, entitled "*An Act to regulate proceedings in Lunacy in the Courts of Judicature established by Royal Charter*," or with the rights of any committee of the person or estate of such lunatic.*

Provision for provinces having insufficient or no asylums.

17A.† In either of the following cases, namely:—

(*a*) when an Executive Government has not established within its limits a public asylum for the reception and detention of lunatics,

(*b*) when it appears to the Governor-General in Council that a public asylum established within such limits is not conveniently situated with respect to any part of the territories administered by such Government, or does not afford sufficient or, in the case of any class of lunatics, suitable accommodation,

the Governor-General in Council may, from time to time, appoint an asylum in any part of British India beyond the limits of such Govern-

* Certain words, which were repealed by Act XVI. of 1874, have been omitted.

† S. 17A has been substituted by Act XX. of 1889, s. 1, for the original section as amended by Act XVIII. of 1886.

ment to be an asylum to which any Magistrate or Judge exercising jurisdiction within those limits may send lunatics, or any class of lunatics, as to an asylum established under this Act for the division in which his jurisdiction is situate. Act XXXVI. of 1858.

17B.* The Governor-General in Council may, from time to time, by order direct, with respect to any part of British India which is not annexed to a Presidency, or, being annexed to the Presidency of Fort William, Fort St. George, or Bombay, is situated at a greater distance than three hundred miles from Calcutta, Madras, or Bombay, respectively, that any lunatic asylum in British India named in the order shall be deemed for that part to be a lunatic asylum at the Presidency for the purposes of this Act.

Use of provincial asylums as Presidency asylums for purposes of the Act.

17C.† Any lunatic may be removed from any lunatic asylum established or licensed under this Act, by order of an Executive Government, to any other such asylum within the limits of such Government, and, by order of the Governor-General in Council, to any other asylum in any part of British India.

Removal of lunatic from one asylum to another.

18. The word "lunatic," as used in this Act, shall mean and include every person of unsound mind, and every person being an idiot.

Interpretation-clause.

The word "Magistrate" shall include a person exercising the powers of a Magistrate.

SCHEDULE.‡

FORM A.

CERTIFICATE OF MEDICAL OFFICER (*see sections 4 and 8*).

I, the undersigned, (*here enter name and official designation*), hereby certify that I, on the day of at , personally examined (*here enter name and residence of lunatic*), and that the said is a lunatic (*or* an idiot, *or* a person of unsound mind), and a proper person to be taken charge of, and detained under care and treatment, and that I have formed this opinion on the following grounds, namely:—

1. Facts indicating insanity observed by myself (*here state the facts*).
2. Other facts (if any) indicating insanity communicated to me by others (*here state the information and from whom*).

(*Signed*.

FORM B.

ORDER FOR THE RECEPTION OF A PRIVATE PATIENT (*see section 7*).

I, the undersigned, hereby request you to receive *A B*, a lunatic [*or* an idiot, *or* a person of unsound mind] as a patient into your asylum. Subjoined is a statement respecting the said *A B*.

(*Signed*) Name.
Occupation (if any).
Place of abode.
Degree of relationship (if any), or other circumstance of connection with the patient.

Dated this day of one thousand eight hundred and .

To

Superintendent of the Asylum at [*describing the asylum*].

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* S. 17B has been inserted by Act XVIII. of 1886, s. 3.

† S. 17C has been inserted by Act XX. of 1889, s. 2.

‡ As to the necessity of strictly following the corresponding forms in the English Act, see *Reg.* v. *Pinder*, 24 L. J., Q. B., 148.

Act V. of 1859.

STATEMENT.

[*If any of the particulars in this statement be not known, the fact to be so stated.*]

Name of patient, with Christian name at length.
Sex and age.
Married, single, or widowed.
Condition of life, and previous occupation (if any).
The religious persuasion, as far as known.
Previous place of abode.
Whether first attack.
Age (if known) on first attack.
When and where previously under care and treatment.
Duration of existing attack.
Supposed cause.
Whether subject to epilepsy.
Whether suicidal.
Whether dangerous to others.
Whether found lunatic by inquisition or enquiry under order of Court, and date of commission or order for inquisition or enquiry.
Whether any member of patient's family has been or is affected with insanity.

(*Signed*) Name.

[*Where the person signing the statement is not the person who signs the order, the following particulars concerning the person signing the statement are to be added, namely :*]

Occupation (if any).
Place of abode.
Degree of relationship (if any), or other circumstance of connection with the patient.

ACT V. OF 1859.*

RECEIVED THE G.-G.'S ASSENT ON THE 4TH MARCH 1859.

An Act to empower the holders of ghátwáli-lands in the district of Birbhúm to grant leases extending beyond the period of their own possession.

Preamble.

WHEREAS it has been held that the ghátwáls of the district of Bírbhúm who pay the revenue of their lands directly to Government under the provisions of Regulation XXIX., 1814, of the Bengal Code, have not the power of alienating their lands; and whereas, for the development of the mineral resources of the country in which the said ghátwáli-lands are situate, and for the improvement of the said lands, it is expedient that the power of granting leases for periods not limited by the term of their own possession should, in certain cases, be extended to the possessors of such lands; It is enacted as follows:—

Right of ghátwáls of Birbhúm to grant leases.

1. Ghátwáls holding lands in the district of Bírbhúm under the provisions of the aforesaid Regulation shall have the same power of granting leases for any period which they may deem most conducive to the improvement of their tenures, as is allowed by law to the proprietors of other lands:

Proviso.

Provided that no lease of ghátwáli-lands for any period extending beyond the lifetime or incumbency of the grantor of the lease shall be valid and binding on the successors of the grantor, unless the same shall be granted for the working of mines, or for the

* Act V. of 1859 has been declared to be in force in the Santál Parganas by Reg. III. of 1872, s. 3, as amended by Reg. III. of 1886, s. 2.

clearing of jungle, or for the erection of dwelling-houses or manufactories, or for tanks, canals, and similar works; and shall be approved by the Commissioner of the division, such approval being certified by an endorsement on the lease under the signature of the Commissioner. Act IX. of 1859.

Court of Wards and Revenue-authorities have like power in certain cases.

2. If any of the said ghátwáli-lands be at any time under the superintendence of the Court of Wards, or otherwise subject to the direct control of the officers of Government, it shall be lawful for the Court of Wards or the Commissioner to grant leases for any such purpose as aforesaid; and every lease so granted shall be valid and binding on all future possessors of the said lands, anything in the existing law to the contrary notwithstanding.

ACT IX. OF 1859.*

RECEIVED THE G.-G.'s ASSENT ON THE 30TH APRIL 1859.

An Act to provide for the adjudication of claims to property seized as forfeited.

Preamble.

WHEREAS it is expedient† to remove doubts concerning the powers of officers or other persons to whom commissions may have been issued for the trial of heinous offences in cer-

* The object of the unrepealed parts of this Act is stated to be "to give validity to certain forfeitures or seizures of property which have been or are liable to be called in question on the ground of some irregularity of procedure, or defect or informality in recording the conviction of the parties whose property has been forfeited or seized, or of the absence of a formal adjudication of forfeiture as required by Act XXV. of 1857." —*Statement of Objects and Reasons, para. 1.*

Excepting the last paragraph of s. 18 this Act has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to the Upper Burma Laws Act (XX. of 1886).

Ss. 16, 17, 18, and 20 of this Act have been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

The same sections have been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

Sindh	See *Gazette of India*	Dec. 4, 1886, Pt. I., p. 672.
West Jalpaiguri	Ditto	Mar. 5, 1881, Pt. I., p. 74.
The District of Hazáribágh	Ditto	Oct. 22, 1881, Pt. I., p. 507.
The District of Lohárdaga	Ditto	Oct. 22, 1881, Pt. I., p. 508.
The District of Mánbhum	Ditto	Oct. 22, 1881, Pt. I., p. 509.
Pargana Dhálbhum in the District of Singbhum	Ditto	Oct. 22, 1881, Pt. I., p. 510.
The Jhánsí Division	Ditto	Aug. 31, 1878, Pt. I., p. 547.
The scheduled portion of the Mirzápur District	Ditto	May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	May 31, 1879, Pt. I., p. 382.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán	Ditto	Jan. 30, 1886, Pt. I., p. 48.
The Scheduled Districts of the Central Provinces	Ditto	Dec. 13, 1879, Pt. I., p. 771.
The District of Silhat	Ditto	Oct. 14, 1879, Pt. I., p. 631.

It has been extended, under the same Act, to the following Scheduled Districts :—

Kumáon and Garhwál	See *Gazette of India*	Nov. 4, 1876, Pt. I., p. 606.
The North-Western Provinces Tarái	Ditto	Sep. 23, 1876, Pt. I., p. 505.

It has been declared, under the same Act, not to be in force in the District of Lahaul.—See *Gazette of India*, May 1, 1886, Pt. I., p. 301.

† Certain words, repealed by Act XII. of 1891, Sch. I., have here been omitted.

Act IX. of 1859. tain districts, and concerning the validity of convictions and adjudications of forfeiture made by such officers or other persons; It is enacted as follows:—

1 to **15**. [*Repealed by Act VIII. of 1868.*]

16. Whenever any person shall have been convicted of an offence for which his property was forfeited to Government, no Court has power in any suit or proceeding relating to such property to question the validity of the conviction.

Convictions involving forfeiture not questionable in suit relating to forfeited property.

17. Whenever any person shall have been convicted as above by an officer having power to try and convict, the validity of any such conviction shall not be questioned upon the ground that the record of the conviction does not show in what capacity such officer acted, or that it represents him to have acted in a different capacity from that in which he had power to convict.

Conviction not questionable because capacity of convicting officer not shown.

18. Whenever any property shall have been attached or seized without either conviction or an adjudication of forfeiture by any officer of Government as property forfeited or liable to be forfeited to Government for an offence for which, upon conviction, the property of the offender would be forfeited, the validity of such attachment or seizure shall not be called in question by any Court or other authority in any suit or proceeding, unless the offender or alleged offender shall, within one year after the seizure of his property, have surrendered himself for trial, and upon trial before a competent Court shall have been or shall be acquitted of the offence, and shall prove to the satisfaction of the Court that he did not escape or keep out of the way for the purpose of evading justice.

Attachment without adjudication of forfeiture not questionable unless offender be acquitted within one year, &c.

Nothing in this section shall extend to persons entitled to pardon upon Her Majesty's proclamation, published in the *Calcutta Gazette Extraordinary*, dated the 1st of November 1858, or to any person who, having surrendered himself within the period of one year after the seizure of his property, shall be discharged by order of Government without a prosecution.

Exemption of pardoned person.

19. [*Repealed by Act VIII. of 1868.*]

20. Nothing in this Act shall be held to affect the right of parties not charged with any offence for which, upon conviction, the property of the offender is forfeited, in respect of any property attached or seized as forfeited or liable to be forfeited to Government; provided that no suit brought by any party in respect of such property shall be entertained unless it be instituted within the period of one year from the date of the attachment or seizure of the property to which the suit relates. *

Rights of parties not charged with offence involving forfeiture.

Proviso.

* Ss. 16, 17, 18, and 20 of this Act have been declared to apply to the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874).

ACT X. OF 1859.*

Act X. of 1859.

RECEIVED THE G.-G.'S ASSENT ON THE 29TH APRIL 1859.

An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.

Preamble.

WHEREAS it is expedient to re-enact with certain modifications the provisions of the existing law relative to the rights of raiyats with respect to the delivery of pattás and the occupancy of land, to the prevention of illegal exaction and extortion in connection with demands of rent, and to other questions connected with the same; to extend the jurisdiction of Collectors, and to prescribe rules for the trial of such questions, as well as of suits for the recovery of arrears of rent, and of suits arising out of the distraint of property for such arrears; and to amend the law relating to distraint; It is enacted as follows:—

1. [*Repealed by Act XIV. of 1870, s. 1.*]

Raiyat entitled to pattá.

2. Every raiyat is entitled to receive from the person to whom the rent of the land held or cultivated by him is payable, a pattá containing the following particulars:—

the quantity of land and, where fields have been numbered in a Government survey, the number of each field;

the amount of annual rent;

the instalments in which the same is to be paid;

and any special conditions of the lease.

If the rent is payable in kind, the proportion of produce to be delivered, and the time and manner of delivery.

Raiyats holding land at fixed rates to receive pattás.

3. Raiyats who, in the Provinces of Bengal, Bihár, Orissa, *and Benares*,† hold lands at fixed rates of rent, which have not been changed from the time of the permanent settlement, are entitled to receive pattás at those rates.

If rent of land be not changed for twenty years.

4. Whenever, in any suit under this Act, it shall be proved that the rent at which land is held by a raiyat in the said Provinces has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that the land has been held at that rent from the time of the permanent settlement, unless the contrary be shown, or unless it be proved that such rent was fixed at some later period.

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* Act X. of 1859 has been declared in force, under s. 3 of the Scheduled Districts Act (XIV. of 1874), in the District of Mánbhum.—See Notification No. 1395, dated Oct. 21, 1881, published in the *Calcutta Gazette*, Nov. 2, 1881, Pt. I A., p. 192, and *Gazette of India*, Oct. 22, 1881, Pt. I., p. 507.

It has been repealed by Ben. Act VIII. of 1869, s. 107, as to Districts in Bengal to which that Act is extended. It has also been repealed in the Division of Chutia Nagpur (except the District of Mánbhum and the Tributary Mahálś) by Ben. Act I. of 1879, s. 3, and in Bengal (except Calcutta, Orissa, and the Scheduled Districts), by Act VIII. of 1885, s. 2.

† The Act has been repealed in the Province of Benares by Act XVIII. of 1873, s. 2.

Act X. of 1859.

Raiyats having right of occupancy, but not holding at fixed rates, to receive pattás.

5. Raiyats having rights of occupancy, but not holding at fixed rates as described in the two preceding sections, are entitled to receive pattás at fair and equitable rates.

In case of dispute, the rate previously paid by the raiyat shall be deemed to be fair and equitable, unless the contrary be shown in a suit by either party under the provisions of this Act.

Right of occupancy of raiyat cultivating or holding land for twelve years.

6. Every raiyat who has cultivated or held land for a period of twelve years has a right of occupancy in the land so cultivated or held by him, whether it be held under pattá or not, so long as he pays the rent payable on account of the same; but this rule does not apply to khámár, nijjot, or sir-land belonging to the proprietor of the estate or tenure, and let by him on lease for a term or year by year, nor (as respects the actual cultivator) to lands sublet for a term or year by year by a raiyat having a right of occupancy.

The holding of the father or other person from whom a raiyat inherits shall be deemed to be the holding of the raiyat within the meaning of this section.

Saving of terms of written contracts.

7. Nothing contained in the last preceding section shall be held to affect the terms of any written contract for the cultivation of land entered into between a landholder and a raiyat when it contains any express stipulation contrary thereto.

Pattás to raiyats not having rights of occupancy.

8. Raiyats not having rights of occupancy are entitled to pattás only at such rates as may be agreed on between them and the persons to whom the rent is payable.

Person granting pattá entitled to counterpart-engagement.

9. Every person who grants a pattá is entitled to receive from the person to whom the pattá is granted a kabúliyat or counterpart-engagement in conformity with the terms of the pattá.

The tender to any raiyat of a pattá such as the raiyat is entitled to receive shall be held to entitle the person to whom the rent is payable to receive a kabúliyat from such raiyat.

Exactions in excess of rent, or receipt withheld.

10. Every under-tenant or raiyat from whom any sum is exacted in excess of the rent specified in his pattá, or payable under the provisions of this Act, whether as abwáb or under any other pretext, and every under-tenant, raiyat, or cultivator from whom a receipt is withheld for any sum of money paid by him as rent, shall be entitled to recover from the person receiving such rent damages not exceeding double the amount so exacted or paid.

Form of receipt.

Receipts for rent shall specify the year or years on account of which the rent is acknowledged to have been paid; and any refusal to make such specification shall be held to be a withholding of a receipt.

Landholder not to compel attendance of tenant for adjustment of rent, &c.

Payment of rent how enforced.

11. The power heretofore vested in zamindárs and other landholders of compelling the attendance of their tenants for the adjustment of their rents or for any other purpose is withdrawn, and all such persons are prohibited from adopting any means of compulsion for enforcing payment of the rents due to them other than are authorized by the provisions of this Act.

12. If payment of rent, whether the same be legally due or not, is extorted from any under-tenant or raiyat by illegal confinement or other duress, such under-tenant or raiyat shall be entitled to recover such damages, not exceeding in any case the sum of two hundred rupees, as may be deemed a reasonable compensation for the injury done him by such extortion. Act X. of 1859.

Damages for extorting payment of rent by duress.

An award of compensation under this section shall not bar or affect any penalty or punishment to which the person practising such extortion may be subject by law.

13.* No under-tenant or raiyat who holds or cultivates land without a written engagement, or under a written engagement not specifying the period of such engagement, or whose engagement has expired, or has become cancelled in consequence of the sale for arrears of rent or revenue of the tenure or estate in which the land held or cultivated by him is situate, and has not been renewed, shall be liable to pay any higher rent for such land than the rent payable for the previous year, unless a written notice shall have been served on such under-tenant or raiyat, in or before the month of Chait, specifying the rent to which he will be subject for the ensuing year, and the ground on which an enhancement of rent is claimed.

Enhancement of rent of raiyat holding without, or after expiry, &c., of written engagement.

Such notice shall be served by order of the Collector on the application† of the person to whom the rent is payable, and shall, if practicable, be served personally on the under-tenant or raiyat.

If for any reason the notice cannot be served personally upon the under-tenant or raiyat, it shall be affixed at his usual place of residence, or, if he have no such place of residence in the district in which the land is situate, the mode of service of such notice shall be by affixing it at the mál-kachahri of such land or other conspicuous place thereon, or at the village chauri or chaupál, or at some other conspicuous place in the village in which the land is situate.

14.* Any under-tenant or raiyat on whom such notice as aforesaid has been served may contest his liability to pay the enhanced rent demanded of him, either by complaint of excessive demand of rent as hereinafter provided, or in answer to any suit preferred against him for recovery of arrears of the enhanced rent.

Mode of contesting enhancement of rent.

15. No dependent taluqdár or other person possessing a permanent transferable interest in land intermediate between the proprietor of an estate and the raiyats, who, in the Provinces of Bengal, Bihár, Orissa, *and Benares*,‡ holds his taluq or tenure (otherwise than under a terminable lease) at a fixed rent which has not been changed from the time of the permanent settlement, shall be liable to any enhancement of such rent, anything in section 51, Regulation VIII., 1793, or in any other law to the contrary notwithstanding.

Dependent taluqdár, &c., holding at fixed rent without change since permanent settlement, not liable to enhancement.

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* The provisions of ss. 13 and 14 are not to affect settlement proceedings under Ben. Reg. VII. of 1822 or other law for the time being in force for the regulation of settlements.—See Ben. Act VIII. of 1879, s. 4.

† Here certain words, repealed by the Court Fees Act (VII. of 1870), s. 2, have been omitted.

‡ This Act has been repealed in the Province of Benares by Act XVIII. of 1873, s. 2.

Act X. of 1859.

16. Whenever, in any suit under this Act, it shall be proved that the rent at which a taluq or other tenure is held in the said Provinces has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that such taluq or tenure has been held at that rent from the time of the permanent settlement, unless the contrary be shewn, or it be proved that such rent was fixed at some later period.

Rent of taluqdár, &c., not changed for twenty years to be *primâ-facie* evidence of occupancy at that rent since permanent settlement.

17.* No raiyat having a right of occupancy shall be liable to an enhancement of the rent previously paid by him except on some one of the following grounds, namely :—

Rent of raiyat having right of occupancy not to be enhanced unless—

that the rate of rent paid by such raiyat is below the prevailing rate payable by the same class of raiyats for land of a similar description and with similar advantages in the places adjacent :

rate paid by him is below that prevailing in adjacent places :

that the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the raiyat :

value of land, &c., has increased independently of raiyat :

that the quantity of land held by the raiyat has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.

quantity of land held by raiyat is greater than he has paid rent for.

18. Every raiyat having a right of occupancy shall be entitled to claim an abatement of the rent previously paid by him, if the area of the land has been diminished by diluvion or otherwise, or if the value of the produce or the productive powers of the land have been decreased by any cause beyond the power of the raiyat, or if the quantity of land held by the raiyat has been proved by measurement to be less than the quantity for which rent has been previously paid by him.

When raiyat may claim abatement of rent.

19. Any raiyat who desires to relinquish the land held or cultivated by him shall be at liberty to do so provided he gives notice of his intention in writing to the person entitled to the rent of the land or his authorized agent in or before the month of Chait of the year preceding that in which the relinquishment is to have effect.

Relinquishment of land by raiyat after notice.

If he fail to give such notice, and the land is not let to any other person, he shall continue liable for the rent of the land.

If the person entitled to the rent of the land or his agent refuse to receive any such notice and to sign a receipt for the same, the raiyat may make an application† to the Collector, who shall thereupon cause the notice to be served on such person or his agent in the manner provided in the section 13.

20. Any instalment of rent which is not paid on or before the day when the same is payable according to the pattá or engagement, or, if there be no written specification of the time of payment, at or before the time when such instalment is payable

What to be deemed arrear of rent.

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* The provisions of s. 17 are not to affect settlement-proceedings under Ben. Reg. VII. of 1822 or other law for the time being in force for the regulation of settlements.—See Ben. Act VIII. of 1879, s. 4.

† Here certain words, repealed by the Court Fees Act (VII. of 1870), s. 2, have been omitted.

according to established usage, shall be held to be an arrear of rent under this Act, and, unless otherwise provided by written agreement, shall be liable to interest at twelve per centum per annum. Act X. of 1859.

21. When an arrear of rent remains due from any raiyat at the end of the Bengal year, or at the end of the month of Jeth of the Fasli or Wiláiyatí year, as the case may be, such raiyat shall be liable to be ejected from the land in respect of which the arrear is due:

Liability of raiyat to be ejected for arrear due.

Provided that no raiyat having a right of occupancy, or holding under a pattá the term of which has not expired, shall be ejected otherwise than in execution of a decree or order under the provisions of this Act.

Proviso.

22. When an arrear of rent shall be adjudged to be due from any farmer or other leaseholder not having a permanent or transferable interest in the land, the lease of such leaseholder shall be liable to be cancelled, and the leaseholder to be ejected:

Liability of farmer to have lease cancelled for arrear adjudged due.

Provided that no such lease shall be cancelled nor the leaseholder ejected otherwise than in execution of a decree or order under the provisions of this Act.

Proviso.

23. (1) All suits for the delivery of pattás or kabúliyats, or for the determination of the rates of rent at which such pattás or kabúliyats are to be delivered;

Cognizance of suits under Act.

(2) all suits for damages on account of the illegal exaction of rent or of any unauthorized cess or impost, or on account of the refusal of receipts for rent paid, or on account of the extortion of rent by confinement or other duress;

(3) all complaints of excessive demand of rent, and all claims to abatement of rent;

(4) all suits for arrears of rent due on account of land either khiráji or lákhiráj, or on account of any rights of pasturage, forest-rights, fisheries, or the like;

(5) all suits to eject any raiyat or to cancel any lease on account of the non-payment of arrears of rent, or on account of a breach of the conditions of any contract by which a raiyat may be liable to ejectment or a lease may be liable to be cancelled;

(6) all suits to recover the occupancy or possession of any land, farm, or tenure, from which a raiyat, farmer, or tenant has been illegally ejected by the person entitled to receive rent for the same;

(7) all suits arising out of the exercise of the power of distraint conferred on zamindárs and others by sections 112 and 114 of this Act, or out of any acts done under colour of the exercise of the said power as hereinafter particularly provided,

shall be cognizable by the Collectors of land-revenue, and shall be instituted and tried under the provisions of this Act, and, except in the way of appeal as provided in this Act, shall not be cognizable in any other Court, or by any other officer, or in any other manner.

24. Suits by zamindárs and others in receipt of the rent of land, against any agents employed by them in the management of land or collection of rents, or the sureties of such agents, for money received or accounts kept by such agents in the course of

Suits by zamindárs against agents for money or accounts.

Act X. of 1859. such employment, or for papers in their possession, shall be cognizable by the Collectors, and shall be instituted and tried under the provisions of this Act, and shall not be cognizable in any other Court except in the way of appeal as provided in this Act.

Ejectment of cultivators, farmers, &c., by zamindárs.

25. If any zamindár or other person in receipt of the rent of land requires assistance to eject any cultivator not having a right of occupancy, or to eject any farmer or other tenant holding only for a limited period after the determination of his lease or tenancy, or any agent after the determination of his agency, or to enforce any attachment or ejectment expressly authorized by any Regulation or Act, he shall make application to the Collector, and the Collector shall proceed thereupon to enquire into the case and pass orders in the manner provided for suits under this Act :

Proviso.

Provided that no such application for the ejectment of a farmer on the determination of a lease shall be received, if the lease be of the kind denominated thíká, zar-í-peshgí, or the like, in which an advance has been made by the leaseholder, and the proprietor's right of re-entry at the end of the term is contingent on the repayment of such advance either in money or by the usufruct of the land. In all such cases the parties must proceed by suit in the Civil Court.

26. [*Repealed by Bengal Act VI. of 1862.*]

Registry of transfers of taluqs, &c..

27. All dependent taluqdárs and other persons possessing a permanent transferable interest in land intermediate between the zamindár and the cultivator are required to register, in the sharishtá of the zamindár or superior tenant to whom the rents of their taluqs or tenures are payable, all transfers of such taluqs or tenures or portions of them, by sale, gift, or otherwise, as well as all successions thereto, and divisions among heirs in cases of inheritance.

And every zamindár or superior tenant is required to admit to registry and otherwise give effect to all such transfers, when made in good faith, and all such successions and divisions.

If any zamindár or superior tenant refuse to admit to registry or otherwise give effect to any such transfer or succession, the transferee or successor may make application to the Collector, and the Collector shall thereupon proceed to enquire into the case in the manner provided for suits under this Act, and, if no sufficient grounds are shown for the refusal, shall pass an order enjoining the zamindár or superior tenant to admit to registry and otherwise give effect to such transfer or succession :

Proviso.

Provided that no zamindár or superior tenant shall be required to admit to registry or give effect to any division or distribution of the rent payable on account of any such tenure, nor shall any such division or distribution of rent be valid and binding without the consent in writing of the zamindár or superior tenant.

Applications to dispossess grantees of land exempt from revenue.

28. So much of section 10, Regulation XIX., 1793, section 10, Regulation XLI., 1795,* section 6, Regulation XXXI., 1803,* section 21, Regulation VIII., 1805,* and section 24, Regulation XII., 1805, as authorizes and requires proprietors and farmers of estates and dependent talu[illegible]s, in cases in which

* Ben. Regs. XLI. of 1795, XXXI. of 1803, and VIII. of 1805 have been repealed by Act XIX. of 1873.

grants for holding land exempt from the payment of revenue have been made subsequent to the dates specified in the said sections, of their own authority to collect the rents of such land, and to dispossess the grantees of the proprietary right in the land, and to re-annex it to the estate or taluq in which it may be situate, is repealed; and any proprietor or farmer who may desire to assess any such land or to dispossess any such grantee shall make application to the Collector, and such application shall be dealt with as a suit under the provisions of this Act.

Every such suit shall be instituted within the period of twelve years from the time when the title of the person claiming the right to assess the land or dispossess the grantee, or of some person claiming under him, first accrued.

If such period has already elapsed or will elapse within two years from the date of the passing of this Act, such suit may be brought at any time within two years from such date.

Suits by or against sarbaráhkárs or tahsildárs of estates held khás.

29. All suits which, under the provisions of this Act, may be brought by or against zamindárs or other persons in the receipt of the rent of land, may be brought by or against sarbaráhkárs, or tahsildárs of estates held under khás management, whether such estates are the property of Government or of individuals.

If the Collector or the sarbaráhkár or tahsildár of any such estate in the Provinces of Bengal, Bihár, and Orissa, proceed against any defaulting raiyat or under-tenant of such estate under the powers vested in him by section 25, Regulation VII., 1799,* and not according to the provisions of this Act, such raiyat or under-tenant may contest the demand on account of which he is so proceeded against by suit in the Civil Court.

Commencement of — suits generally;

30. Except as otherwise herein provided, all suits instituted under this Act shall be commenced within the period of one year from the date of the accruing of the cause of action.

suits for grant of pattás, &c.;

31. Suits for the delivery of pattás or kabúliyats, and for the determination of the rates of rent at which such pattás or kabúliyats are to be delivered, may be instituted at any time during the tenancy.

suits for arrears of rent.

32. Suits for the recovery of arrears of rent shall be instituted within three years from the last day of the Bengal year, or from the last day of the month of Jeth of the Fasli or Wiláiyatí year in which the arrear claimed shall have become due.

For arrears of rent due at the passing of this Act, suits shall be brought within three years after the passing of this Act, or within the period now allowed for the institution of such suits in the Civil Court, whichever may first expire:

Proviso.

Provided that, if the suit be for the recovery of rent at a higher rate than was payable in the previous year, such rent having been enhanced after issue of notice under section 13, and the enhancement not having been confirmed by any competent Court, the suit shall be instituted within three months from the end of the Bengal year or of the month of Jeth of the Fasli or Wiláiyatí year, on account of which such enhanced rent is claimed.

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* Ben. Reg. VII. of 1799 has been repealed by Act XVI. of 1874.

Act X. of 1859.

Suits against agents for money, papers, or accounts.

33. Suits for the recovery of money in the hands of an agent or for the delivery of accounts or papers by an agent may be brought at any time during the agency or within one year after the determination of the agency of such agent, or, in the case of claims now existing, within one year after the passing of this Act or within the period now allowed for the institution of such suits in the Civil Court, whichever may first expire:

Proviso.

Provided that, if the person having the right to sue shall, by means of fraud, have been kept from the knowledge of the receipt of any such money by the agent, or if any fraudulent account shall have been rendered by the agent, the suit may be brought within one year from the time when the fraud shall have been first known to such person; but no such suit shall in any case (except the case of claims now existing as aforesaid) be brought at any time exceeding three years from the termination of the agency.

Mode of instituting suits. Form of plaint or statement of claim.

34. Suits under this Act shall be instituted by presenting to the Collector a plaint or statement of claim, which shall contain the name, description, and place of abode of the plaintiff, the name, description, and place of abode of the defendant, so far as they can be ascertained, the substance of the claim, and the date of the cause of action.

Statement by whom presented.

35. The statement of claim shall be presented by the plaintiff or by an authorized agent of the plaintiff who has personal knowledge of the facts of the case, or by an agent who shall be accompanied by a person who has such knowledge.

Verification of statement.

36. The statement of claim shall be subscribed and verified at the foot by the plaintiff or his agent in any manner following or to the like effect:—

I, *A. B.*, do declare that the above statement is true to the best of my knowledge and belief.

Punishment for false verification.

If the statement shall contain any averment which the person making the verification shall know or believe to be false, or shall not know or believe to be true, such person shall be subject to punishment according to the law for the time being in force for the punishment of giving or fabricating false evidence.

37. [*Repealed by Act XXXVI. of 1860, s. 1.*]

Documentary evidence to be produced by plaintiff.

38. If the plaintiff rely in support of his claim on any document in his possession, he shall deliver the same to the Collector at the time of presenting his statement of claim.

Unless such document be delivered in, or its non-production be sufficiently excused, or unless the Collector see fit to extend the time for producing the same, it shall not afterwards be admitted.

Production of document required by plaintiff from defendant.

39. If the plaintiff require the production of any document in the possession or power of the defendant, he may, at the time of presenting his statement of claim, deliver to the Collector a description of the document in order that the defendant may be required to produce the same.

40. [*Repealed by Ben. Act VI. of 1862, s. 1.*]

41. If the suit be for the ejectment of a raiyat, farmer, or tenant from any land, farm, or tenure, or for the recovery of the occupancy or possession of any land, farm, or tenure, the statement shall describe (as circumstances may require) the extent, situation, and designation of the same; and, if necessary for the identification of the land, shall set forth the boundaries of such land.

Plaint in suit for ejectment of raiyat, &c., or for recovery of occupancy or possession of land, &c.

42. If the statement of claim do not contain the several particulars hereinbefore required to be specified therein, or be not subscribed and verified as hereinbefore required, the Collector may return the statement to the plaintiff, or at his discretion allow it to be amended.

Statement may be returned or allowed to be amended.

43. If the statement of claim be in proper form, the Collector, except as otherwise hereinafter specially provided, shall direct the issue of a summons to the defendant, and if the plaintiff requires the personal attendance of the defendant, and satisfy the Collector that such personal attendance is necessary, or the Collector of his own accord require such personal attendance, the summons shall contain an order for the defendant to appear personally on a day to be specified in the summons, otherwise the summons shall order the defendant to appear personally or by an agent duly authorized on his behalf, who has personal knowledge of the subject, or who shall be accompanied by a person who has such personal knowledge.

Issue of summons; personal attendance of defendant may be required.

44. The day to be specified in the summons shall be fixed with reference to the state of the file and the distance that the defendant may be or be supposed to be at the time from the place where the Court is held, and the summons shall order the defendant to produce any document which he may have in his possession, of which the plaintiff demands inspection, or upon which the defendant may intend to rely in support of his defence.

Day to be specified in summons how fixed. Defendant to produce necessary documents, and bring witnesses, willing to attend without process.

It shall also enjoin him to bring with him his witnesses if they are willing to attend without issue of process; and shall be in the form (A) contained in the schedule to this Act, or to the like effect.

45. The summons shall be served by delivering a copy of the summons to the defendant personally when practicable; or, if the summons cannot be served on the defendant personally, by affixing a copy of it to some conspicuous part of his usual place of abode, and also affixing a copy of the same in the Collector's office.

Summons how served.

46. If the summons be served personally, the názir shall endorse on the summons the fact of such service. If personal service be not effected, the názir shall endorse on the summons the reason of not serving it personally, and how it has been served.

Endorsement by názir on summons.

47. If the usual place of abode of the defendant be in another district, the summons, together with the cost of the service thereof, shall be sent by the public post to the Collector of such district, who shall issue the summons, and return the same after service, with the prescribed endorsement, to the officer by whom it was transmitted to him.

Execution of process in other district.

Act X. of 1859.

Cost of serving summons or warrant to be deposited.

48. The amount of the cost of serving the summons, or, if a warrant be issued as provided in the next succeeding section, of serving the warrant, shall in all cases be deposited in Court upon the same day or the day next following that on which the plaint or statement of claim is presented to the Collector.

If the said amount be not so deposited (except in cases in which the Collector may allow the issue of summons free of cost under the discretion reserved to him in section 146), the case shall not be brought on the file of suits; but in such case the plaintiff may present another plaint at any time within the period allowed by the rules for the limitation of actions.

Warrant of arrest in what cases issued.

49. If in any suit against an under-tenant or raiyat for the recovery of an arrear of rent, or against an agent for the recovery of any money, papers, or accounts, the plaintiff desires a warrant of arrest to be issued against the defendant, such defendant being resident within the district in which the suit is instituted, he shall present with his statement of claim an application for the issue of such warrant.

When such application is presented, the Collector shall examine the plaintiff or his agent on his oath or affirmation or otherwise according to the law for the time being in force in relation to the examination of witnesses, and inspect the documents adduced by him in support of his claim, and if there be *primâ-facie* grounds for believing the claim to be well-founded, and that, if a summons be issued, the defendant will abscond instead of appearing to answer the claim, the Collector may issue a warrant for the arrest of the defendant.

The Collector shall fix a reasonable time for the return of the warrant, which shall be in the form (B) contained in the schedule to this Act, or to the like effect; and the officer entrusted with the service of the warrant shall, at the time of arresting the defendant, deliver to him a notice addressed to the defendant (which shall be in the form (C) in the schedule or to the like effect), containing the particulars of the claim, and requiring the defendant, if he contest the claim, to bring with him any document upon which he may intend to rely in support of his defence.

But no such warrant shall be issued in a suit for arrears of rent due in respect of a dependent taluq or other transferable tenure, which, as hereinafter provided, is liable to sale in execution of any decree which may be passed in the case.

Procedure after arrest of defendant.

50. If a defendant be arrested under the warrant of arrest, he shall be brought with all convenient speed before the Collector, and the Collector shall commit him to custody, unless he deposit in Court such sum as may be specified in the notice.

Procedure on defendant being brought before Collector.

51. When a defendant is brought before the Collector under warrant, the Collector shall, with all convenient speed, proceed to try the case in the manner hereinafter provided; and if the suit cannot be at once adjudicated, the Collector may, if he think fit, require the defendant to give security for his appearance whenever the same may be required at any time whilst the suit is depending or until execution of the final decree which may be passed thereon, and may commit the defendant to the civil jail to be there detained until he shall furnish such security or deposit such sum as the Collector shall order.

Form of security-bond.

The security-bond shall be in the form (D) contained in the schedule to this Act or to the like effect.

Procedure if warrant cannot be served.

52. If the defendant cannot be arrested under the warrant, the Collector, on the application of the plaintiff, shall either postpone the case for such period as he may think proper in order that the plaintiff may apply within the said period for another warrant to be issued for the arrest of the defendant, or shall forthwith issue a proclamation to be affixed in his own office and at the residence of the defendant, fixing a day for the hearing of the case, which shall not be less than ten days from the date of the publication of the notice at the residence of the defendant.

If the defendant shall appear in pursuance of the proclamation, he shall be dealt with as provided in the last preceding section.

Compensation for arrest applied for without reasonable cause.

53. If it shall appear to the Collector that the arrest of the defendant was applied for without reasonable cause, the Collector may in his decree award to the defendant such sum not exceeding one hundred rupees as he may deem a reasonable compensation for any injury or loss which the defendant may have sustained by reason of such arrest or of his detention in jail during the pendency of the suit.

Consequence of neither party appearing on day of trial.

54. If, on the day fixed by the summons or proclamation for the appearance of the defendant, or on any subsequent day to which the hearing of the case may be adjourned prior to the recording of an issue for trial as hereinafter provided, neither of the parties appear in person or by an agent, the case shall be struck off with liberty to the plaintiff to bring a fresh suit, unless precluded by the rules for the limitation of actions.

When Collector to pass judgment by default; and when to decree upon admission.

Proviso.

55. If on any such day the defendant only appear, the Collector shall pass judgment against the plaintiff by default, unless the defendant admit the cause of action, in which case the Collector shall proceed to give judgment for the plaintiff upon such admission without costs, provided that such judgment, if there be more than one defendant, shall be only against the defendant who makes the admission.

If plaintiff only appear, Collector may proceed *ex parte*.

56. If on any such day the plaintiff only appear, the Collector, upon proof that the summons or proclamation has been duly served according to the provisions of this Act, shall proceed to examine the plaintiff or his agent, and after considering the allegations of the plaintiff, and any documentary or oral evidence adduced by him, may either dismiss the case or postpone the hearing of it to a future day for the attendance of any witness the plaintiff may wish to call, or may pass judgment *ex parte* against the defendant.

Defendant appearing at postponed hearing may be heard in answer.

57. If the defendant shall appear on any subsequent day to which the hearing of the suit may be postponed under the last preceding section, the Collector may, upon such conditions, if any, as to costs or otherwise as he may think proper, allow the defendant to be heard in answer to the suit as if he had appeared on the day fixed for his attendance.

Revival, reversal, and alteration of decrees *ex parte* or by default.

58.* No appeal shall lie from a judgment passed *ex parte* against a defendant who has not appeared, or from a judgment against a plaintiff by default for non-appearance.

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* As to appeals from orders of Collector under s. 58, see Ben. Act VI. of 1862, s. 13.

Act X. of 1859.

But in all such cases, if the party against whom judgment has been given shall appear, either in person or by agent, if a plaintiff within fifteen days from the date of the Collector's order, and if a defendant within fifteen days after any process for enforcing the judgment has been executed, or at any earlier period, and shall shew good and sufficient cause for his previous non-appearance, and shall satisfy the Collector that there has been a failure of justice, the Collector may, upon such terms and conditions as to costs or otherwise as he may think proper, revive the suit, and alter or rescind the decree, according to the justice of the case.

But no decree shall be reversed or altered without previously summoning the adverse party to appear and be heard in support of it.*

On appearance, parties to be examined by Collector, and may cross-examine each other.

59. When both parties appear in person or by agent on the day named in the summons, or upon any subsequent day to which the hearing of the case may be adjourned for sufficient reason to be recorded by the Collector, the Collector shall proceed to examine such of the parties as may be present, and either party or his agent may cross-examine the other.

If either of the parties be not bound to attend personally, any agent by whom he shall appear, or any person who shall accompany such agent, shall be examined and cross-examined in like manner as the party himself would have been if he had attended personally.

At the time of examination, the defendant, if he think fit, may file a written statement of his defence.

Examination of parties, &c.

60. The examination of the parties or their agents or such other persons as aforesaid shall be upon oath or affirmation or otherwise according to the law for the time being in force relative to the examination of witnesses.

The substance of the examination shall be reduced to writing in the vernacular language of the Collector and filed with the record.

Witnesses to be examined.

61. If either of the parties shall bring forward a witness on such day, the Collector may take the evidence of such witness.

Documentary evidence to be produced by defendant.

62. If the defendant rely on any document in support of his defence, he shall deliver the same into Court at the first hearing of the suit; and unless such document be so delivered in, or its non-production be sufficiently excused, or unless the Collector see fit to extend the time for producing the same, it shall not afterwards be admitted.

After examination, Collector may make decree if no further evidence required.

63. If after the examination required by section 59 and also the examination of any witness who may attend to give evidence on behalf of either of the parties, and after a consideration of the documentary evidence adduced, a decree can be properly made without further evidence, the Collector shall make his decree accordingly.

Consequence of inability of agent to answer.

64. If on such examination as aforesaid, the agent of either party be unable to answer any material question relating to the case which the Collector is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Collector may postpone the hearing of the case to a future day, and direct that the party whose agent may have been unable to an-

swer as aforesaid shall attend in person on such day; and if the party so directed to attend shall fail to appear in person on the day appointed, the Collector may pass judgment as in case of default, or make such other order as he may deem proper in the circumstances of the case. Act X. of 1859.

If necessary, Collector to record issue and to fix day for hearing further evidence.

65. If on such examination as aforesaid it appear that the parties are at issue on any question upon which it is necessary to hear further evidence, the Collector shall declare and record such issue, and shall fix a convenient day for the examination of witnesses and the trial of the suit; and the trial shall take place on that day, unless there be sufficient reason for adjourning it, which reason shall be recorded by the Collector.

Parties to produce witnesses on day of trial; or Collector, on application, to summon witness.

66. The parties shall bring forward their witnesses on the day of trial, and if either party require assistance to procure the attendance of a witness on such day either to give evidence or to produce a document, he shall apply to the Collector in sufficient time before the day fixed for the trial, to enable the witness to be summoned to attend on that day; and the Collector shall issue a summons requiring such witness to attend.

Rules regarding attendance, examination, &c., of witnesses.

67.* The provisions of the Regulations and Acts and all other rules for the time being in force relating to the evidence of witnesses, for procuring the attendance of witness and the production of documents, and for the examination, remuneration, and punishment of witnesses, whether parties to the case or not, in cases before the Civil Courts of the Presidency of Bengal, shall, except so far as the same may be inconsistent with the provisions of this Act, apply to, and be of equal force and effect in, suits under this Act.

Consequence of parties not appearing on day fixed for trial of issue.

68. If on the day fixed for the trial of any issue neither of the parties appear, the case shall be struck off under the conditions provided in section 54.

If on any such day one only of the parties appear, the issue may be tried and determined in the absence of the other party upon such proof as may be then before the Court.

Suits by and against náibs, gumáshtas, &c.

69. When suits under this Act are instituted or defended by náibs, gumáshtas, or other persons employed in the collection of rent or management of land in the name and on the behalf of the landholders by whom they are so employed, all the provisions of this Act by which the personal appearance or attendance of parties to a suit is or may be required shall be applicable to such náibs, gumáshtas, or other persons; and anything which by this Act is required or permitted to be done by a party in person may be done by any such person as aforesaid.

Processes served on any such person shall be as effectual for all purposes in relation to the suit as if the same had been served on the landholder in person, and all the provisions of this Act relative to the service of processes on a party to the suit shall be applicable to the service of processes on such person.

Personal attendance when not required.

70. A plaintiff or defendant shall not be required to attend in person if of the female sex and of a rank or class which, according to the custom and manners of the country, would render it improper for her to appear in public.

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* As to the applicability of the provisions of s. 67 to proceedings of Collector under s. 10 of Ben. Act VI. of 1862, see the latter enactment.

Act X. of 1859.

71. Any party to a suit may employ an authorized agent or mukhtár to conduct the case on his behalf, but the appointment of such agent or mukhtár shall not excuse the personal attendance of the plaintiff or defendant in cases where his personal attendance is required by the summons or any order of the Court.*

Employment of authorized agents or mukhtárs.

72. The Collector may in any case grant time to the plaintiff or defendant to proceed in the prosecution or defence of a suit, and may also from time to time, in order to the production of further proof or for other sufficient reason to be recorded by the Collector, adjourn the hearing or further hearing of any case in such manner as to him may seem fit.

Collector may grant time or adjourn hearing.

73. The Collector may at any stage of a case cause a local enquiry and report respecting the matter in dispute to be made by any officer subordinate to him, or by any other officer of Government with the consent of the authority to whom such officer is subordinate, or may himself proceed to the spot and make such local enquiry in person.

Collector may cause local enquiry to be made.

The provisions of the law for the time being in force relative to local enquiries by Amíns or Commissioners under orders of the Civil Courts shall apply to any local enquiry made by any officer under this section, and, so far as they are applicable, to enquiries made by the Collector in person.

In the latter case, the Collector, after completing the enquiry, shall record on the proceedings such observations as appear to him appropriate, and the observations so recorded shall be received as evidence in the suit.

74. [*Repealed by Ben. Act VI. of 1862.*]

75. No interest shall be allowed to a plaintiff on any sum paid by the defendant into Court from the date of such payment, whether such sum be in full of the plaintiff's claim or fall short thereof.

No interest on deposits.

76. If on the trial of a suit for the delivery of a pattá instituted by a raiyat having a right of occupancy the parties do not agree as to the term for which the pattá is to be granted, the Collector shall fix such term as under the circumstances of the case he may think just and proper:

Collector when to fix term for which pattá is to be granted.

Provided that the term shall not in any case be longer than ten years, and in estates not permanently settled shall not extend beyond the period for which the proprietor of the estate has engaged with Government:

Proviso.

Provided also that, if the defendant be a farmer or other person having only a temporary interest in the land, the term of the pattá shall not extend beyond the period of the continuance of such interest.

For cultivators not having a right of occupancy, the term of pattá shall be exclusively in the discretion of the person entitled to the rent of the land.

77. When in any suit between the landholder and a raiyat or under-tenant under this Act, the right to receive the rent of the land or tenure cultivated or held by the raiyat or under-tenant is disputed, and such right is claimed by or on behalf of a third person on the ground that such third person or a

In suits for rent, third person claiming to be made party.

* The rest of s. 71, repealed by Act XX. of 1865, s. 3, has been omitted.

person through whom he claims has actually and in good faith received and enjoyed such rent before and up to the time of the commencement of the suit, such third person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by such third person shall be inquired into and the suit shall be decided according to the result of such inquiry : Act X. of 1859.

Proviso.

Provided always that the decision of the Collector shall not affect the right of either party, who may have a legal title to the rent of such land or tenure, to establish his title by suit in the Civil Court if instituted within one year from the date of the decision.

Suits for ejectment or cancelment of lease.

78. Any person desiring to eject a raiyat or to cancel a lease on account of non-payment of arrears of rent may sue for such ejectment or cancelment and for recovery of the arrear in the same action, or may adduce any unexecuted decree for arrears of rent as evidence of the existence of such arrear in a suit for such ejectment or cancelment.

In all cases of suits for the ejectment of a raiyat or the cancelment of a lease, the decree shall specify the amount of the arrear, and if such amount, together with interest and costs of suit, be paid into Court within fifteen days from the date of the decree, execution shall be stayed.

79. [*Repealed by Ben. Act VI. of 1862, s. 1.*]

If person required by decree refuse to grant pattá, Collector may do so.

80. When a decree is given for the delivery of a pattá, if the person required by the decree to grant such pattá refuse or delay to grant the same, the Collector may grant a pattá in conformity with the terms of the decree under his own hand and seal, and such pattá shall be of the same force and effect as if granted by the person aforesaid.

Refusal to execute kabúliyat as required by decree.

81. When a decree is given for the delivery of a kabúliyat, if the person required by the decree to execute such kabúliyat shall refuse to execute the same, the decree shall be evidence of the amount of rent claimable from such person, and a copy of the decree under the hand and seal of the Collector shall be of the same force and effect as a kabúliyat executed by the said person.

Mode of executing decree for ejectment or reinstatement of raiyat.

82. If the decree be for the ejectment of any raiyat from land occupied by him, or for the reinstatement of any raiyat in the occupancy of land from which he has been ejected, the decree shall be executed by giving the possession or occupancy of the land to the person entitled by the decree to such possession or occupancy.

Punishment for obstructing execution.

If any opposition is made to the execution of the order for giving such possession or occupancy by the party against whom the order is made, the Magistrate, on the application of the Collector, shall give effect to the same.

Execution of decree for cancelment of lease or ejectment or reinstatement of farmer or tenant.

83. If the decree be for the cancelment of any lease or the ejectment of any farmer or other person (not being an actual cultivator), or for the reinstatement of any farmer or other such person in the possession of a farm or tenure from which he has been ejected, the decree shall be executed by proclaiming the substance of the decree to the cultivators

Act X. of 1859.

or other occupants by beat of drum or in such other manner as may be customary, and affixing the same in some conspicuous place within or adjacent to the farm or tenure.

When judgment-debtor may be detained or imprisoned without issue of process of execution.

84. If the decree be for arrears of rent or for money, papers, or accounts, and the defendant have been committed to jail or appear pursuant to the conditions of any security-bond given under section 51, the Collector may order that he be detained in or committed to the civil jail, unless he immediately pay into Court the amount of the decree with costs, or otherwise comply with the terms of the decree.

Liability of surety on failure to deliver judgment-debtor into custody.

85. If the judgment-debtor have given security for his appearance, and be not present when judgment is pronounced, and the surety shall fail to deliver him into custody when required so to do, process of execution may be taken out against the surety in the same manner as if a decree for the amount due by the debtor had been passed against the surety.

If the decree be for the delivery of papers or accounts, and the defendant be not present when judgment is pronounced, and the surety shall fail to deliver him into custody when required so to do, execution may be taken out against the surety for the sum due under the bond in the same manner as if a decree for that sum had been passed against the surety.

86. [*Repealed by Ben. Act VI. of 1862, s. 1.*]

Application for execution against moveable property.

87. Any moveable property required to be seized under an execution shall, if practicable, be described in a list to be furnished by the judgment-creditor, but if the creditor is unable to furnish such list, he may apply for a general attachment of the debtor's effects to the amount of the judgment and costs.

In either case the property to be seized shall be pointed out to the officer entrusted with the execution of the process by the creditor or his agent.

Duration of warrant.

88. Every warrant of execution shall bear date on the day on which it is signed by the Collector, and shall continue in force for such period as the Collector may direct, not being more than sixty days calculated from such date.

Second and successive warrants.

89. Second and successive warrants of execution may be issued by order of the Collector on the application of the judgment-creditor, after the expiration of the period fixed for the continuance in force of a previous warrant.

After one year execution not to issue without notice.

90. Process of execution shall not be issued upon any judgment without previous notice to the party against whom execution is applied for, if, when application for the issue of the process is made, a period of more than one year shall have elapsed from the date of the judgment or from the date of the last previous application for execution.

Notice of execution against representative.

91. Execution on a judgment shall not issue against the heir or other representative of a deceased party without notice to such heir or other representative to appear and be heard.

Execution after three years from date of judgment.

92. No process of execution of any description whatsoever shall be issued on a judgment under this Act after the lapse of three years from the date of such judgment, unless the

judgment be for a sum exceeding five hundred rupees, in which case the period within which execution may be had shall be regulated by the general rules in force in respect to the period allowed for the execution of decrees of the Civil Courts. Act X. of 1859.

Warrant against person.

93. If a warrant issue for taking in execution the body of any person, the officer charged with the execution of the warrant shall bring him with all convenient speed before the Collector.

If such person shall not then deposit in Court the full amount specified in the warrant, or make such arrangement for the payment of the same as shall be satisfactory to the judgment-creditor, or satisfy the Collector that he has no present means of paying the debt, the Collector shall send him to the civil jail, there to remain for such time as shall be directed by a warrant addressed to the keeper of the jail, unless he shall, in the meantime, pay the full amount for the payment of which he is liable under the decree :

Limit of imprisonment.

Provided that the time for which a debtor may be confined in execution of decree under this Act shall not exceed three calendar months when the amount decreed exclusive of costs does not exceed fifty rupees, or six calendar months when such amount does not exceed five hundred rupees, or two years in any other case.

If arrest be for non-delivery of accounts.

If the decree against any person arrested under a warrant be for the delivery of papers or accounts, and the papers or accounts shall not be delivered by him when he is brought before the Collector, such person may be committed to the civil jail, there to remain for such time not exceeding six calendar months as the Collector shall direct, unless he shall, in the meantime, deliver the papers or accounts according to the terms of the decree.

No second imprisonment under same judgment.

94. Any person once discharged from jail shall not be imprisoned a second time under the same judgment.

If the amount due under the decree do not exceed one hundred rupees, the Collector may declare such discharged person absolved from further liability under that decree.

In other cases the discharge shall not extinguish the liability of the discharged person under the decree, or exempt any property belonging to such person from attachment in execution of the same.

Deposit of diet-money.

95. Any person applying for a warrant of arrest under section 49, or suing out process of execution against the body of any person, shall deposit in Court, at the time of issue of the warrant, diet-money for one month of thirty days at such rate as the Collector may direct, not exceeding two annas per diem, unless the Collector for any special reason direct that deposit be made at a higher rate, which shall not exceed four annas per diem.

Payment of diet-money in advance during imprisonment.

96. Payment of diet-money at the same rate shall be made previously to the commencement of each succeeding month of the imprisonment, in failure of which the party confined shall be discharged.

Diet-money to be costs in suit.

97. All diet-money spent in providing subsistence for any prisoner shall be added to the costs in the suit, and any diet-money not so spent shall be returned to the person who deposited the same.

Act X. of 1859.

List of property taken in execution and proclamation of sale.

98. In executing a writ of execution against the moveable property of a debtor liable under this Act, the officer charged with the execution of the writ shall prepare a list of the property pointed out by the judgment-creditor, and shall publish a proclamation specifying the day upon which the sale is intended to be held, together with a copy of the said list, at the intended place of sale and at the residence of the debtor.

A copy of the said proclamation and list shall be transmitted to the Collector, and shall be affixed in his office.

Custody and sale of moveable property taken in execution.

99. No sale of any moveable property taken in execution shall be made until after the end of ten days next following the day on which such property may have been so taken.

Until such sale the property shall be deposited in some fit place, or it may remain in custody of some fit person approved by the officer executing the writ.

The provisions of sections 129 to 133, so far as the same are applicable, shall be applied to sales under this section.

Collector may stay sale of moveable property seized if third party claim interest therein.

100. If before the day fixed for the sale a third party appear before the Collector and claim a right or interest in any of the moveable property taken in execution, the Collector shall examine such party or his agent on oath or affirmation or otherwise, according to the law for the time being in force relative to the examination of witnesses, and, if he see sufficient reason for so doing, may stay the sale of such property.

Collector to adjudicate such claims.

101. The Collector shall adjudicate upon such claim, and make such order between the claimant and the plaintiff and defendant in the original suit as shall seem fit.

In trying such claim the Collector shall be guided by the rules contained in this Act so far as they may be applicable.

Claimant failing to establish right liable to compensate judgment-creditor.

102. If the claimant shall fail to establish his right to the property taken in execution, the Collector at the time of disposing of the case may award to the judgment-creditor against such claimant as part of the costs such sum as he may consider sufficient to cover any loss of interest or damage which the judgment-creditor may have sustained by reason of the postponement of the sale of the property.

No appeal from order under sections 101, 102.

Proviso.

103. No appeal shall lie from any order passed by the Collector under the two last preceding sections. But the party against whom the same may be given shall be at liberty to bring a suit in the Civil Court to establish his right at any time within one year from the date of the order; provided that, if the order be for the sale of the property, the suit shall not be for the recovery of the property, but shall be for damages against the judgment-creditor by whom the property was brought to sale.

Sale not vitiated by irregularity in publishing or conducting.

Proviso.

104. No irregularity in publishing or conducting a sale of moveable property under an execution shall vitiate such sale, but this rule shall not be held to deprive any person who may sustain damage by reason of such irregularity from recovering such damage by action in the Civil Court; provided such action be brought within one year from the date of sale.

105. If the decree be for an arrear of rent due in respect of an under-tenure, which by the title-deeds or the custom of the country is transferable by sale, the judgment-creditor may make application for the sale of the tenure, and the tenure may thereupon be brought to sale in execution of the decree according to the rules* for the sale of under-tenures for the recovery of arrears of rent due in respect thereof contained in any law for the time being in force.

Sale of transferable tenures in execution of decrees for arrears of rent.

But no such application shall be received when a warrant of execution has been previously issued against the person or moveable property of the judgment-debtor, so long as such warrant remains in force.

If after sale of an under-tenure any portion of the amount decreed remains due, process may be applied for against any other property, moveable or immoveable, belonging to the debtor, and any such immoveable property may be brought to sale in the manner provided in section 110 of this Act.

106. If before the day fixed for the sale of any such under-tenure as aforesaid in execution of a decree for arrears of rent due in respect of such under-tenure, a third party appear before the Collector and allege that such third party and not the person against whom the decree has been obtained is the proprietor of such under-tenure, and was in lawful possession of the same at the time when such decree was obtained, the Collector shall examine such party in the manner provided in section 100 for the examination of third parties, and if he see sufficient reason for so doing, and such party shall deposit in Court the amount of the decree or give sufficient security for the same, the Collector shall stay the sale, and proceed to inquire into and adjudicate upon the claim:

If third party claim to be lawful possessor of tenure, Collector to stay sale and to inquire and adjudicate.

Provided that no transfer of an under-tenure which by the provisions of this Act or any other law for the time being in force is required to be registered in the sharishtá of the zamindár or superior tenant shall be recognized unless it have been so registered, or unless sufficient cause for non-registration be shewn to the satisfaction of the Collector.

Proviso.

107. In trying such claim the Collector shall be guided by the rules contained in this Act, so far as the same may be applicable, and the judgment passed by the Collector on such claim shall not be subject to appeal, but the party against whom it is given may bring a suit in the Civil Court to establish his right at any time within one year from the date of the judgment.

Mode of adjudicating claims.

108. If a decree is given in favour of a sharer in a joint undivided estate, dependent taluq, or other similar tenure for money due to him on account of his share of the rent of an under-tenure situate in such undivided estate or taluq or tenure, application for the sale of such under-tenure shall not be received unless execution shall have been first taken out against any moveable property which the judgment-debtor may possess within the district in which the suit was instituted, and the sale of such property, if any, shall have proved insufficient to satisfy the judgment.

Execution of decrees given in favour of sharers in undivided estates or tenures.

In such case such under-tenure, if of the nature described in section 105, may be brought to sale in execution of the decree, in the same manner as any

* For these rules, see Ben. Act VIII. of 1865, s. 4.

Act X. of 1859.

other immoveable property may be sold in execution of a decree for money under the provisions of the two next following sections.

Execution against immoveable property when money-decree cannot be otherwise satisfied.

109. In the execution of any decree for the payment of money under this Act, not being money due as arrears of rent of a saleable under-tenure, if satisfaction of the judgment cannot be obtained by execution against the person or moveable property of the debtor within the district in which the suit was instituted, the judgment-creditor may apply for execution against any immoveable property belonging to such debtor.

Execution against house or building.

110. If the immoveable property against which execution is applied for be a house or other building, process shall be issued in the same manner as for the attachment and sale of moveable property, and the provisions of sections 98 and 99 shall be applicable to the execution of such process.

Against saleable under-tenure.

If the property be a saleable under-tenure, it shall be sold under the provisions of the law for the time being in force applicable to the sale of such under-tenures for demands other than those of arrears of rent due in respect thereof.

If it be an estate or a share of an estate.

If the property be an estate or a share of an estate, it shall be sold under the rules in force for the sale of estates for the recovery of demands recoverable by the same process as arrears of land-revenue.

Consequence of objection offered before sale of immoveable property.

111. If, before the day fixed for the sale of any immoveable property as aforesaid, objection shall be offered to the sale on the ground of such property not belonging to the judgment-debtor, and consequently not being liable to be sold in execution of a decree against him, the Collector shall examine the party making the objection in the manner prescribed in section 100 for the examination of third parties, and, if satisfied that there is sufficient ground for so doing, shall stay the sale, and proceed to inquire into and adjudicate upon the objection, in the same manner, and subject to the same right of suit by the party against whom judgment may be given, as is provided in section 107.

Produce of land held hypothecated for rent.

Arrears of rent recoverable by distraint under following rules.

112. The produce of the land is held to be hypothecated for the rent payable in respect thereof; and when an arrear of rent as defined in section 20 of this Act is due from any cultivator of land, the zamindár, lákhirájdár, farmer, dependent taluqdár, under-farmer, or other person entitled to receive rent immediately from such cultivator, instead of bringing suit for the arrear as hereinbefore provided, may recover the same by distraint and sale of the produce of the land on account of which the arrear is due under the following rules:

Cultivators who have given security exempt from distraint.

Provided always that, when a cultivator has given security for the payment of his rent, the produce of the land for the rent of which security has been given shall not be liable to distraint:

Proviso.

Provided also that no sharer in a joint estate, dependent taluq, or other tenure in which a division of lands has not been made amongst the sharers, shall exercise the power of distraint, otherwise than through a manager authorized to collect the rents of the whole estate, taluq, or tenure on behalf of all the sharers in the same.

113. Distraint shall not be made for any arrear which has been due for a longer period than one year; nor for the recovery of any sum in excess of the rent payable for the same land in the preceding year, unless a written engagement for the payment of such excess has been executed by the cultivator. Act X. of 1859.

Distraint when barred.

114. The power of distraint vested by section 112 in zamindárs and other persons entitled to receive rent from cultivators of land may be exercised by managers under the Court of Wards, sarbaráhkárs, and tahsildárs of estates held under khás management, and other persons lawfully entrusted with the charge of landed property; and also by the náibs, gumáshtás, and other agents employed by any such persons as aforesaid in the collection of rent, if expressly authorized by power-of-attorney in that behalf:

Power of distraint of managers under Court of Wards, &c.

Provided that, if any illegal act is committed by any such náib, gumáshtá, or other agent under colour of the exercise of the said power, the person employing such agent shall be liable, as well as the agent, for any damages accruing by reason of such act.

Proviso.

115. Standing crops and other ungathered products of the earth, and crops or other products when reaped or gathered, and deposited in any threshing-floor or place for treading out grain or the like, whether in the field or within a homestead, may be distrained by persons invested with the powers of distraint under the provisions of this Act.

Standing crops and crops gathered but not stored liable to distraint.

But no such crops or products other than the produce of the land in respect of which an arrear of rent is due or of land held under the same engagement, and no grain or other produce after it has been stored by the cultivator, and no other property whatsoever, shall be liable to distraint under this Act.

116. Before or at the time when distraint is made under this Act, the distrainer shall cause the defaulter to be served with a written demand for the amount of the arrear, together with an account exhibiting the grounds on which the demand is made.

Defaulter to be served with written demand, &c., before or at time of distraint.

The demand and account shall, if practicable, be served personally on the defaulter, or, if he abscond or conceal himself so that they cannot be so served, shall be affixed at his usual place of residence.

117. Unless the amount of the demand is immediately paid or tendered, the distrainer may distrain property as aforesaid of value proportionate to the amount of the arrear with costs of the distress; and shall prepare a list or description of the said property, and deliver a copy of the same to the owner, or, if he be absent, affix it at his usual place of residence.

Distress proportionate to arrear.

List of property served on owner.

118. Standing crops and other ungathered products may, notwithstanding the distraint, be reaped and gathered by the cultivator, and may be stored in such granaries or other places as are commonly used by him for the purpose.

Standing crops, &c., when attached, to be reaped and stored by cultivator, or, if he neglect to do so, by distrainer.

If the cultivator neglect to do so, the distrainer shall cause the said crops or products to be reaped or gathered, and in such case shall store the same either in such granaries or other places as aforesaid, or in some other convenient place in the neighbourhood.

Act X. of 1859.

In either case the distrained property shall be placed in the charge of some person appointed by the distrainer for the purpose.

Crops or products which from their nature do not admit of being stored may be sold before they are cut or gathered, under the rules hereinafter provided; but in such case the distraint shall be made at least twenty days before the time when the crops or products or any part of the same would be fit for cutting or gathering.

Distrainer may apply for aid to Collector in case of resistance.

119. If a distrainer shall be opposed or shall apprehend resistance, and shall desire to obtain the assistance of a public officer, he may apply to the Collector, and the Collector may, if he thinks necessary, depute an officer to support the distrainer in making the distraint.

Servants employed to distrain to be furnished with written authority.

120. When any person empowered to distrain property under section 112 or section 114 shall employ a servant or other person to make the distress, he shall give to such servant or person a written authority* for the same, and the distress shall be made in the name and on the responsibility of the person giving such authority.

Distress withdrawn if defaulter tender payment of arrear and expenses prior to sale.

121. If at any time after property has been distrained, and prior to the day fixed for its being put up to sale as hereinafter provided, the owner of the property shall tender payment of the arrear demanded of him and of the expenses of the distress, the distrainer shall receive the same, and shall forthwith withdraw the distress.

Application for sale.

122. Within five days from the time of the storing of any distrained crops or products, or if the crops or products do not, from their nature, admit of being stored, within five days from the time of making the distress, the distrainer shall apply for sale of the same to the Civil Court Amín or other officer authorized to sell property in satisfaction of decrees of the Civil Court within the circle in which the distrained property is situate, or to such other public officer as the Local Government shall appoint for the purpose.

Form of application.

123. The application shall be in writing, and shall contain an inventory or description of the property distrained, the name of the defaulter and his place of residence, the amount due and the date of the distress, and the place in which the distrained property is deposited.

Deposit of cost of notice to defaulter.

Together with the application, the distrainer shall deliver to the Civil Court Amín or other officer the amount necessary for the service of a notice upon the defaulter as hereinafter provided.

Procedure of Amin on receipt of application.

124. Immediately on receipt of the application the Civil Court Amín or other officer shall transmit a copy of it to the Collector, and shall serve a notice (which shall be in the form (G) contained in the schedule to this Act or to the like effect) on the person whose property has been distrained, requiring him either to pay the

* Here certain words, repealed by the Court Fees Act (VII. of 1870), s. 2, have been omitted.

amount demanded, or to institute a suit to contest the demand before the Collector within the period of fifteen days from the receipt of the notice. Act X. of 1859.

He shall at the same time send to the Collector, for the purpose of being put up in his office, a proclamation fixing a day for the sale of the distrained property, which shall not be less than twenty days from the date of the application; and shall deliver a copy of the proclamation to the peon charged with the service of the notice, to be put up by him in the place where the distrained property is deposited.

The proclamation shall contain a description of the property, the demand for which it is to be sold, and the place where the sale is to be held.

Amín to suspend sale on receipt of Collector's certificate of institution of suit.

125. If a suit shall be instituted before the Collector in pursuance of the aforesaid notice, the Collector shall transmit to the Civil Court Amín or other officer, or if so requested shall deliver to the owner of the distrained property, a certificate of the institution of such suit; and on such certificate being received by or presented to the Amín or other officer, he shall suspend proceedings in regard to the sale of the distrained property.

Suit to contest distrainer's demand before notice of sale.

126. A person whose property has been distrained in the manner hereinbefore provided may institute a suit to contest the demand of the distrainer immediately after the distraint of his property, and before the issue of notice of sale.

When such suit is instituted, the Collector shall proceed in the manner prescribed in the last preceding section.

If thereafter application for the sale of the property is made to the Civil Court Amín or other officer, he shall transmit a copy of the application to the Collector, and suspend further proceedings pending the decision of the case.

Distress withdrawn on receipt of Collector's certificate of execution of bond to pay amount.

127. The person whose property has been distrained may, at the time of instituting any such suit as aforesaid, or at any subsequent period, execute a bond with security, binding himself to pay whatever sum may be adjudged to be due from him with interest and costs of suit; and when such bond is executed, the Collector shall give to the owner of the property a certificate to that effect, or if so requested shall serve the distrainer with notice of the same; and upon such certificate being presented to the distrainer by the owner of the property, or served on him by order of the Collector, the property shall be released from distraint.

On expiration of period fixed in proclamation of sale, if institution of suit to contest demand not certified, sale may proceed.

128. On the expiration of the period fixed in the proclamation of sale, if the institution of a suit to contest the demand of the distrainer has not been certified to the Civil Court Amín or other officer in the manner hereinbefore provided, he shall, unless the said demand, with such costs of the distress as shall be allowed by him, be discharged in full, proceed to sell the property or such part of it as may be necessary in the manner following.

Place and manner of sale of distrained property.

129. The sale shall be held at the place where the distrained property is deposited, or at the nearest ganj, bázár, hát, or other place of public resort, if the Civil Court Amín or

Act X. of 1859.

other officer should be of opinion that it is likely to sell there to better advantage.

The property shall be sold by public auction in one or more lots as the officer holding the sale may think advisable; and if the demand, with the costs of distress and sale, be satisfied by the sale of a portion of the property, the distress shall be immediately withdrawn with respect to the remainder.

If fair price not offered, sale may be postponed, and shall be then completed, whatever price offered.

130. If on the property being put up for sale a fair price in the estimation of the officer holding the sale be not offered for it, and the owner of the property or some person authorized to act on his behalf apply to have the sale postponed until the next day, or the next market-day if a market be held at the place of sale, the sale shall be postponed until such day, and shall be then completed at whatever price may be offered for the property.

Payment of purchase-money.

131. The price of every lot shall be paid for in ready money at the time of sale or as soon after as the officer holding the sale shall think necessary; and in default of such payment the property shall be put up again and sold.

When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

Disposal of proceeds of sale.

132. From the proceeds of the sale of distrained property the officer holding the sale shall make a deduction at the rate of one anna in the rupee on account of the costs of the sale, and shall transmit the amount to the Collector in order that it may be credited to Government.

He shall then pay to the distrainer the expenses incurred by the distrainer on account of the distress and of the issue of the notice and proclamation of sale prescribed in section 124 to such amount as, after examination of the statement of expenses furnished by the distrainer, he shall think proper to allow.

The remainder shall be applied to the discharge of the arrear for which the distraint was made, with interest thereon up to the day of sale; and if there be any overplus, it shall be delivered to the person whose property shall have been sold.

Officer holding sales prohibited from purchasing.

133. Officers holding sales of property under this Act, and all persons employed by, or subordinate to, such officers, are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

Irregularities to be reported to Collector.

Officer not to sell, if he find that defaulter has not received notice.

134. Civil Court Amíns and other officers as aforesaid are required to bring to the notice of Collectors any material irregularities committed by distrainers under colour of this Act; and if in any case, on proceeding to hold a sale of property, the Civil Court Amín or other officer shall find that the owner of the property has not received due notice of the distress and intended sale, he shall postpone the sale and report the case to the Collector, and the Collector shall direct the issue of another notice and proclamation of sale under section 124, or pass such other order as he may think proper.

Act X. of 1859.

135. When a Civil Court Amín or other officer has proceeded to any place for the purpose of holding a sale, and no sale takes place either for the reason stated in the last preceding section or because the demand of the distrainer has been previously satisfied, no intimation of such satisfaction having been given by the distrainer to the Civil Court Amín or other officer, the charge of one anna in the rupee on account of expenses shall be leviable, and shall be calculated on the estimated value of the distrained property.

Recovery of expenses if Amín proceeds to place of sale and no sale takes place.

If the demand of the distrainer be not satisfied until the day fixed for the sale, the charge for expenses shall be paid by the owner of the property, and may be recovered by the sale of such portion thereof as may be necessary.

In every other case it shall be paid by the distrainer, and may be recovered by attachment and sale of the property of the distrainer under the warrant of the Collector:

Provided always that in no case shall a larger amount than ten rupees be recoverable under this section.

136. All proceedings under this Act of the Civil Court Amíns and other officers as aforesaid shall be subject to the revision and orders of the Collectors, and the Collectors, with the sanction of the Boards of Revenue, may require the submission of such periodical reports and statements of business performed by the Civil Court Amíns and other officers as may be thought necessary.

Proceedings of Amíns, &c., subject to revision and orders of Collectors.

137. When a suit has been instituted to contest the demand of a distrainer, and the property has not been released on security, if the demand or any portion of it shall be adjudged to be due, the Collector shall issue an order to the Civil Court Amín or other officer authorizing the sale of the property, and on the application of the distrainer, which shall be made within five days from the receipt of such order by the Civil Court Amín or other officer, such Amín or officer shall publish a second proclamation in the manner prescribed in section 124, fixing another day for the sale of the distrained property, which shall not be less than five nor more than ten days from the date of the proclamation; and unless the amount adjudged to be due with the costs of distress be paid intermediately, shall proceed to sell the property in the manner hereinbefore provided.

Second proclamation of sale.

138. In all suits instituted to contest the demand of a distrainer, the distrainer shall be required to prove the arrear in the same manner as if he had himself brought suit for the amount under the foregoing provisions of this Act.

Procedure after institution of suit to contest demand.

If the demand or any part thereof is found to be due, the Collector shall make a decree for the amount in favour of the distrainer, and the amount may be recovered by sale of the property as provided in the last preceding section if the distress has not been withdrawn, and if any balance remain due after such sale, by execution of the decree against the person and any other property of the defaulter, or if the property have been released on security, by execution of the decree against the person and property of the defaulter and of his surety.

If, on the other hand, the distraint is adjudged to be vexatious or groundless, the Collector, besides directing the release of the distrained property, may award such damages in favour of the plaintiff as the circumstances of the case shall seem to require.

Act X. of 1859.

139. If any person shall claim, as his own, property which has been distrained for arrears of rent alleged to be due from any other person, such person may institute a suit against the distrainer and such other person to try the right to the property in the same manner and under the same conditions as to the time of instituting the suit and to the consequent postponement of sale as a person whose property has been distrained for an arrear of rent alleged to be due from him may institute a suit to contest the demand.

Owner of property distrained for arrears alleged to be due from another may institute suit against distrainer, &c.

When any such suit is instituted, the property may be released upon security being given for the value of the same.

If the claim is dismissed, the Collector shall make an order for the sale of the property or the recovery of the value thereof, as the case may be, for the benefit of the distrainer.

If the claim is upheld, the Collector shall decree the release of the distrained property with costs, and such damages (if any) as the circumstances of the case may seem to require :

Provided always that no claim to any produce of land liable to distrain under this Act, which at the time of the distress may have been found in the possession of a defaulting cultivator, whether such claim be in respect of a previous sale, mortgage, or otherwise, shall bar the prior claim of the person entitled to the rent of the land, nor shall any attachment in execution of a judgment of any Civil Court prevail against such prior claim.

Proviso.

140. If, in any case in which property has been distrained for an arrear of rent, and a suit has been instituted to contest the demand, the right to distrain for such arrear is claimed by or on behalf of any person other than the distrainer on the ground of such other person being actually and in good faith in the receipt and enjoyment of the rent of the land, such other person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by such other person before and up to the time of the commencement of the suit shall be inquired into, and the suit shall be decided according to the result of such inquiry :

Procedure if right to distrain be disputed.

Provided always that the decision of the Collector shall not affect the right of either party who may have a legal title to the rent of the land, to establish his title by suit in the Court if instituted within one year from the date of the decision.

141. If any person whose property has been distrained for the recovery of a demand not justly due, or of a demand due or alleged to be due from some other person, is prevented by any sufficient cause from bringing suit to contest the demand, or to try the right to the property, as the case may be, within the period allowed by sections 124 and 139, and his property is in consequence brought to sale, he may nevertheless institute a suit under this Act to recover damages for the illegal distress and sale of his property.

Persons prevented from suing in time to save property from sale, may sue for damages.

142. If any person empowered to distrain property, or employed for the purpose under a written authority by a person so empowered, shall distrain or sell, or cause to be sold, any property for the recovery of an arrear of rent alleged to be due, otherwise

Also persons aggrieved by illegal act of distrainer.

than according to the provisions of this Act, or if any distrained property shall be lost, damaged, or destroyed by reason of the distrainer not having taken proper precaution for the due keeping and preservation thereof, or if the distraint shall not be immediately withdrawn when it is required to be withdrawn by any provision of this Act, the owner of the property may institute a suit under this Act to recover damages for any injury which he may have thereby sustained. Act X. of 1859.

Unlawful distraint.

143. If any person not empowered to distrain property under sections 112 and 114 of this Act, nor employed for the purpose under a written authority by a person so empowered, shall distrain or sell, or cause to be sold, any property under colour of this Act, the owner of the property may institute a suit under this Act to recover damages from such person for any injury which he may have sustained from the distraint or sale.

The said person shall be held to have committed criminal trespass, and shall be subject to the penalties for that offence in addition to any damages which may be awarded against him in such suit.

Time for commencing suits for damages.

144. Provided always that any suit which may be instituted under any of the last three sections shall be commenced within three months from the date of the occurrence of the cause of action.

Resistance of distraint.

145.* If any person shall resist a distraint of property duly made under this Act, or shall forcibly or clandestinely remove any distrained property, the Collector, upon complaint being made within fifteen days from the date of such resistance or removal, shall cause the person accused to be arrested, and if the offence be proved, and the offender be the owner of the property, shall order him to be imprisoned in the civil jail for six months, or until the whole arrear due to the distrainer with all expenses and costs shall sooner be paid or levied by distress and sale of the property of the offender under warrant of the Collector.

If the person convicted of the offence be any other than the owner of the property, he shall make good to the distrainer the value of the same, and shall further be liable to a fine not exceeding one hundred rupees, or in default of payment thereof, to imprisonment for a period not exceeding two months.

Service of process.

146. Every process issued by a Collector under this Act shall be under the seal and signature of the Collector, and shall be served or executed by the názir or by such other officer as the Collector may direct at the cost of the party at whose instance it issued.

The amount of such cost, and, in the case of summons to a witness, any sum required for the travelling expenses of such witness, shall be deposited in Court before the process is issued :

Provided that, if in any case the Collector is satisfied that a party is unable to pay the cost of any necessary process, he may direct such process to be served free of charge.

Resistance of process.

147. Any resistance or opposition to the lawful process of a Collector under this Act may be punished by the Collector according to the provisions of the law for the time

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* As to immediate disposal of case, where person is arrested under s. 145, see Ben. Act VI. of 1862, s. 18.

Act X. of 1859. being in force for the punishment of resistance or opposition to the processes of the Courts of civil justice.

When in any such case the offender is not present in Court, the Collector may summon him to answer to the charge, and, if, after due service of the summons, he fail to attend, may issue a warrant for his apprehension.

Orders passed by Collectors under this section shall not be deemed to be orders relating to the trial of suits or to the execution of decrees within the meaning of section 151.

148. It shall be competent to the Collector to hold a Court for hearing and determining suits under this Act in any place within the limits of his district or local jurisdiction, provided that every hearing and decision shall be in open Court, and that the parties to the suit or their authorized agents shall have had due notice to attend at such place.

Place of holding Court.

Proviso.

149. [*Repealed by Act XX. of 1865, s. 3.*]

150. [*Repealed by Ben. Act VI. of 1862, s. 1.*]

151. In the performance of their duties under this Act the Collectors and Deputy Collectors shall be subject to the general direction and control of the Commissioners and the Boards of Revenue; and the Deputy Collectors shall be subject to the direction and control of the Collectors, to whom they are subordinate.

Control of Collectors and Deputy Collectors.

All orders passed by a Collector under this Act, not being judgments in suits or orders passed in the course of suits and relating to the trial thereof, or orders passed after decree and relating to the execution thereof, shall be appealable to the Commissioner; and all such orders passed by a Deputy Collector shall be appealable to the Collector; but no judgment of a Collector or Deputy Collector in any suit, and no order of a Collector or Deputy Collector passed in any suit and relating to the trial thereof, or after decree and relating to the execution thereof, shall be open to revision or appeal otherwise than as expressly provided in this Act.

No appeal from orders of Collectors and Deputy Collectors in certain cases.

152. Every appeal against the order of a Collector shall be presented to the Commissioner within thirty days, and every appeal against the order of a Deputy Collector shall be presented to the Collector within fifteen days, from the date of the order.

Time for presenting appeals from orders.

Orders passed in appeal by a Commissioner or a Collector shall not be open to any further appeal, but the Board of Revenue or the Commissioner may call for any case and pass such orders thereon as they may think proper.

153. In suits under clauses 2, 4, and 7 of section 23, and under section 24 of this Act, tried and decided by a Collector, if the amount sued for or the value of the property claimed does not exceed one hundred rupees, the judgment of the Collector shall be final and not open to revision or appeal except as hereinafter provided, unless in any such suit a question of right to enhance or otherwise vary the rent of a raiyat or tenant, or any question relating to a title to land, or to some interest in land as between parties having conflicting claims thereto, has been determined by the judgment, in which case the judgment shall be open to appeal in the manner provided in sections 160 and 161 of this Act.

When appeal allowed from judgment of Collector for money below 100 rupees.

154. In suits in which the judgment oft he Collector is final, as provided in the last preceding section, the Collector may, upon the application of either party, if preferred within thirty days from the date of the decision, order the re-hearing of a suit, upon the ground of the discovery of new evidence or matter material to the issue of the case which the applicant had no knowledge of, or could not produce, at the time of trial. Act X. of 1859.

Re-hearing in suits not open to appeal.

155. When any such suit as aforesaid, in which, if tried and decided by a Collector, the judgment of the Collector would be final, is tried and decided by a Deputy Collector, an appeal from the judgment of the Deputy Collector shall lie to the Collector.

Appeal from decision of Deputy Collector.

156. The petition of appeal shall be written* and shall be presented to the Collector within fifteen days from the date of the decree, provided that such time as may be requisite for procuring a copy of the decree appealed against shall not be reckoned as part of the fifteen days.

Petition of appeal.

157. The Collector shall fix a day for hearing the appeal, and shall cause notice of the same to be served on the respondent in the manner hereinbefore prescribed for the service of summons.

Procedure in appeal.

If, on the day fixed for hearing the appeal, or any other day to which the hearing may be adjourned, the appellant shall not appear in person or by an agent, the appeal shall be dismissed for default.

If the appellant shall appear, and the respondent shall not appear in person or by an agent, the appeal shall be heard *ex parte*.

158. If an appeal be dismissed for default of prosecution, the appellant may, within fifteen days from the date of the dismissal, apply to the Collector for the re-admission of the appeal, and if it shall be proved to the satisfaction of the Collector that the appellant was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the Collector may re-admit the appeal.

Re-admission of appeal.

159. After hearing the appeal the Collector shall give judgment in the manner hereinbefore prescribed for giving judgment in original suits, and the judgment of the Collector shall be final.

Judgment in appeal.

160. In all suits other than those in which, when tried and decided by a Collector, the judgment of the Collector is declared to be final, or when tried and decided by a Deputy Collector, an appeal is allowed to the Collector, an appeal from the judgment of the Collector or Deputy Collector shall lie to the Zila Judge; unless the amount or value in dispute exceed five thousand rupees, in which case the appeal shall lie to the Sadr Court.

In what suits appeal to lie to Zila Judge.

To Sadr Court.

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* Here certain words, repealed by the Court Fees Act (VII. of 1870), s. 2, have been omitted.

Act X. of 1859.

161.* The petition of appeal shall be written†; and the rules in force in regard to the time within which appeals from the decisions of such Courts may be received, and to the manner in which such appeals are heard and determined, and to all proceedings which may be had in respect of such appeals, shall be applicable to appeals to the Zila Judge or Sadr Court under this Act.

Presentation and hearing of appeals.

162. [*Repealed by Ben. Act VI. of 1862, s. 1.*]

163. *Except as provided in the last preceding section,* no Collector shall exercise any jurisdiction under this Act in respect to any lands situate beyond the limits of the district to which he is appointed, by reason of such lands forming part of an estate the revenue of which is paid into the treasury of the said district.

No jurisdiction in Collector as to lands beyond district.

164. No Deputy Collector appointed under Regulation IX., 1833, of the Bengal Code, shall exercise any judicial powers or other jurisdiction under this Act if entrusted with any police-functions.

Deputy Collector when not to exercise judicial powers.

165. Assistants to Collectors shall not exercise any powers under this Act unless invested by Government with the powers of Deputy Collectors, in which case they may exercise the powers hereby assigned to Deputy Collectors.

Powers to be exercised by Assistants to Collectors.

166. Nothing contained in this Act shall be held to affect the rights vested in proprietors of land under direct engagements with Government, of bringing to sale for arrears of rent patní-taluqs and other similar tenures under the provisions of Regulation VIII., 1819.

Saving of rights of proprietors as to tenures under Reg. VIII., 1819.

167. [*Repealed by Act XIV. of 1870, s. 1.*]

168. The words "Civil Jail" as used in this Act shall include the civil jail of the zila and any place appointed by the Executive Government for the confinement of prisoners by any Court constituted under this Act:

"Civil Jail."

The word "Názir" shall include any officer of a Court authorized to serve or execute its process:

"Názir."

Unless there be something in the subject or context repugnant to such construction, words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number, and words importing the masculine gender shall include females.

Number. Gender.

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* As to appeals under s. 10 of Ben. Act VI. of 1862 being subject to the provisions of s. 161, see that enactment.

† Here certain words, repealed by the Court Fees Act (VII. of 1870), s. 2, have been omitted.

SCHEDULE.*

Act X. of 1859.

FORM A (*see section 44*).

FORM OF SUMMONS TO DEFENDANT.

No. (of suit) dated

In the Court of

A. B., Plaintiff.

[*Name, description, and address of plaintiff.*]

C. D., Defendant.

[*Name, description, and address of defendant.*]

Whereas the said *A. B.* has brought a claim against you in this Court for [*here specify particulars of claim as given in the statement*], you are hereby required to appear in person in this Court on the day of [*if not specially required to appear in person, state*, "in person or by an agent who has personal knowledge of the subject, or who shall be accompanied by a person who has such knowledge"] to answer the above-named plaintiff, and you will bring with you (*or* send by your agent) [*here mention any document the production of which may be required by the plaintiff*] which the plaintiff desires to inspect, and all documents on which you may intend to rely in support of your defence. You will also bring with you your witnesses, if they are willing to attend without issue of process.

FORM B (*see section 49*).

FORM OF WARRANT OF ARREST.

No. (of suit) dated

In the Court of

A. B., Plaintiff.

C. D., Defendant.

To the Názir of the Court of the Collector of

Whereas the plaintiff in this suit has obtained an order from the Court for the arrest of the defendant, you are hereby commanded to bring the defendant before the Court on or before the day of to be dealt with according to law.

Dated this day of 185 .

FORM C (*see section 49*).

FORM OF NOTICE TO ACCOMPANY SUCH WARRANT.

In the Court of

A. B., Plaintiff.

[*Name, description, and address of plaintiff.*]

C. D., Defendant.

[*Name, description, and address of defendant.*]

Whereas the said *A. B.* has brought a claim against you in this Court for [*here specify particulars of claim as given in the statement*], and has obtained a warrant for your arrest, you are hereby required, unless you admit the claim, to bring with you to the Court all documents on which you may intend to rely in support of your defence.

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* Owing to the repeal of s. 86, Forms E and F, therein referred to, became obsolete, and were therefore repealed by Act XII. of 1891, Sch. I.

Act XI. of 1859.

FORM D (*see section 51*).

FORM OF SECURITY-BOND FOR APPEARANCE OF DEFENDANT.

Whereas *A. B.*, plaintiff, has instituted a suit in the Court of the Collector of against *C. D.*, defendant, and the said *C. D.* has been required to give security for his appearance at any time when called on while the suit is depending and until execution of the decree, I, *E. F.*, hereby declare myself security for the said *C. D.'s* appearance as aforesaid, and in case of his making default in such appearance, I engage to pay any sum for the payment of which the said *C. D.* may be liable under the decree. [*If the suit be for the delivery of papers or accounts, specify some sum to be fixed by the Collector.*]

FORM E (*see section 86*).

[*Repealed by Act XII. of 1891, Sch. I.*]

FORM F (*see section 86*).

[*Repealed by Act XII. of 1891, Sch. I.*]

FORM G (*see section 123*).

FORM OF NOTICE TO OWNER OF DISTRAINED PROPERTY.

Office of Commissioner for sale of distrained property.

A. B., Distrainer.

[*Name, description, and address of the owner of the property.*]

Whereas the said *A. B.* has applied to have the distrained property specified below sold for the recovery of , alleged to be due to him as arrears of rent, you are hereby required either to pay the said sum to the said *A. B.*, or to institute a suit before the Collector to contest the demand within fifteen days from the receipt of this notice, failing which the property will be sold.

Dated this day of 185 .

ACT XI. OF 1859.*

RECEIVED THE G.-G.'S ASSENT ON THE 4TH MAY 1859.

An Act to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency.

Preamble.

WHEREAS it is expedient to discontinue the practice of obtaining the previous sanction of the Board of Revenue to sales of estates for arrears of revenue, or other demands of

* Act XI. of 1859 has been declared to apply to the whole of Bengal, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 6. It has also been declared in force by Reg. III. of 1872, s. 3, as amended by Reg. III. of 1868, s. 2, in the Santál Parganas, and under the Scheduled Districts Act (XIV. of 1874), it has been declared in force in West Jalpáiguri, and extended to the Dárjiling District, Western Dvárs, the Districts of Hazáribágh, Lohárdaga, and Mánbhum, Pargana Dhálbhum, and the Kolhán.

The Act has been repealed in the territories to which the Assam Land and Revenue Regulation (I. of 1886) extends.—See s. 2 of this Regulation.

The words "proprietor," "revenue," "estate," "tenure," "jurisdiction" (of a Collector), "Collector," and "demand," occurring in the Act, are defined in Bengal Act VII. of 1868, s. 1.

Bengal Acts III. of 1862 and VII. of 1868 are to be read with, and taken as part of, this Act.—See s. 30 of the former Act.

The Public Demands Recovery Act (Bengal Act VII. of 1880), so far as is consistent with the tenor thereof, is to be construed as one with this Act.—See Ben. Act VII. of 1880, s. 2.

Act XI. of 1859.

Government, in the Province of Katak: and whereas it is just that a person having a lien upon an estate, and paying the money necessary to protect it from sale for arrears of revenue, should be reasonably secured: and whereas it is expedient to afford sharers in estates, who duly pay their shares of the sadr jama of their estates, easy means of protecting their shares from sale by reason of the default of their co-sharers: and whereas it is expedient to afford land-holders, particularly absentees, facilities in guarding against the accidental sale of their estates for arrears of revenue by reason of the neglect or fraud of their agents: and whereas it is expedient to provide for the voluntary registration of dependent taluqs existing at the time of settlement: and whereas it is expedient to protect the holders of registered under-tenures created since the settlement, and not resumable by the grantors or their representatives, from loss by the avoidance of their tenures on the occasion of a sale of the superior estate for arrears of public revenue, when the arrears can be realized by such sale: and to give absolute security to such tenures by special registry, when shown to be held at rents sufficient for the security of the revenue: and it is therefore proper, for the above and other purposes, to improve the law relating to sales of land for arrears of revenue in the Provinces of Bengal, Bihár, and Orissa; It is enacted as follows:—

1. [*Repealed by Act XIV. of 1870, s. 1.*]

Arrear of revenue defined.

2. If the whole or a portion of a kist or instalment of any month of the era according to which the settlement and kistbandí of any mahál have been regulated be unpaid on the first of the following month of such era, the sum so remaining unpaid shall be considered an arrear of revenue.

Latest day of payment.

3. Upon the promulgation of this Act, the Board of Revenue at Calcutta shall determine upon what dates all arrears of revenue and all demands which, by the Regulations and Acts in force, are directed to be realized in the same manner as arrears of revenue, shall be paid up in each district under their jurisdiction, in default of which payment the estates in arrear in those districts, except as hereinafter provided, shall be sold at public auction to the highest bidder.

And the said Board shall give notice of the dates so fixed in the official Gazette, and shall direct corresponding publication to be made, as far as regards each district in the language of that district, in the office of the Collector or other officer duly authorized to hold sales under this Act, in the Courts of the Judge, Magistrate (or Joint Magistrate, as the case may be), and Munsifs, and at every tháná-station of that district; and the dates so fixed shall not be changed except by the said Board by advertisement and notification, in the manner above described, to be issued at least three months before the close of the official year preceding that in which the new date is, or dates are, to take effect.

4. [*Repealed by Act XII. of 1891, Sch. I.*]

Proviso as to certain descriptions of arrears.

5. Provided always that no estate, and no share or interest in any estate, shall be sold for the recovery of arrears or demands of the descriptions mentioned below, otherwise than after a notification in the language of the district, specifying the nature and amount of the arrear or demand, and the latest date on which payment thereof shall be received, shall have been affixed for a period of not less than fifteen clear days preceding the date fixed for payment according to section 3 of this Act, in the office of the Collector or other officer duly authorized to hold sales un-

Act XI. of 1859.

der this Act in the Court of the Judge within whose jurisdiction the land advertised lies, and in the Munsif's Court and police-thánáof the division in which the estate or share of an estate to which the notification relates is situated; or if the estate or share of an estate be situated within the jurisdiction of more than one Munsif's Court or police-thánáin some one or more of such Courts or thánás; and also at the kachahrí of the málguzár or owner of the estate or share of an estate, at some conspicuous place upon the estate or share of an estate, the same to be certified by the peon or other person employed for the purpose.

First.—Arrears other than those of the current year, or of the year immediately preceding.

Secondly.—Arrears due on account of estates other than that to be sold.

Thirdly.—Arrears of estates under attachment by order of any judicial authority, or managed by the Collector in accordance with such order.

Fourthly.—Arrears due on account of takkáví, pulbandí, or other demands not being land-revenue, but recoverable by the same process as arrears of land-revenue.

Issue of notifications of sale.

6. The Collector or other officer duly authorized to hold sales under this Act shall, as soon as possible after the latest day of payment fixed in the manner prescribed in section 3 of this Act, issue notifications in the language of the district, to be affixed in his own office and in the Court of the Judge of the district, specifying the estates or shares of estates which will be sold as aforesaid, and the day on which the sale of the same will commence, which day shall not be less than thirty* clear days from the date of affixing the notification in the office of the Collector or other officer as aforesaid.

And if the Government revenue of any estate or share of an estate to be sold exceed the sum of five hundred rupees, a notification of the sale of such estate or share of an estate shall be published in the official Gazette.

Except as hereinafter provided, all estates or shares of estates so specified shall, on the day notified for sale, or on the day or days following, be put up to public auction by and in the presence of the Collector or other officer as aforesaid, and shall be sold to the highest bidder.

Tender after latest day of payment not to stop sale.

And no payment or tender of payment, made after sunset of the said latest day of payment, shall bar or interfere with the sale, either at the time of sale or after its conclusion.

Notice to raiyats, &c.

7. Whenever an estate or share of an estate is notified for sale as provided by section 6 of this Act, the Collector or other officer as aforesaid shall affix a proclamation in the language of the district, in own office, and as soon thereafter as may be in the Munsif's Courts and police-thánás within which the estate or share of an estate, or any part of it, is situated, and also at the kachahrí of the málguzár or the owner of the estate or share of an estate, or at some conspicuous place upon the estate, or share of an estate, forbidding the raiyats and under-tenants to pay to the defaulting proprietor any rent which has fallen due after the day fixed for the last day of payment, on pain of not being entitled to credit in their accounts with the purchaser for any sums so paid.

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* The word "thirty" in s. 6 has been substituted by Ben. Act VII. of 1868, s. 3; and certain words, repealed by the same enactment, have been omitted.

Claims of defaulter against Government not to invalidate sale.

8. No claim to abatement or remission of revenue, unless the same shall have been allowed by the authority of Government, and no private demand or cause of action whatever, held or supposed to be held by any defaulter against Government shall bar or render void or voidable a sale under this Act; nor shall the plea that money belonging to the defaulter, and sufficient to pay the arrear of revenue due, was in the Collector's hands, bar or render void or voidable a sale under this Act, unless such money stand in the defaulter's name alone and without dispute, and unless, after application in due time made by the defaulter, or after the written agreement provided for in section 15 of this Act, the Collector shall have neglected, or refused on insufficient grounds, to transfer it in payment of the arrear of revenue due.

Deposits receivable from persons not proprietors.

9. The Collector or other officer as aforesaid shall, at any time before sunset of the latest day of payment determined according to section 3 of this Act, receive as a deposit from any person, not being a proprietor of the estate or share of an estate in arrear, the amount of the arrear of revenue due, to be credited in payment of the arrear at sunset as aforesaid, unless before that time the arrear shall have been paid by a defaulting proprietor of the estate.

And in case the person so depositing, whose money shall have been credited in the manner aforesaid, shall be a party in a suit pending before a Court of justice for the possession of the estate or share from which the arrear is due, or any part thereof, it shall be competent to the said Court to order the said party to be put into temporary possession of the said estate or share, or part thereof, subject to the rules in force for taking security in the cases of parties in civil suits.

And if the person so depositing, whose money shall have been credited as aforesaid, shall prove before a competent Civil Court that the deposit was made in order to protect an interest of the said person, which would have been endangered or damaged by the sale, or which he believed in good faith would have been endangered or damaged by the sale, he shall be entitled to recover the amount of the deposit, with or without interest as the Court may determine, from the defaulting proprietor.

And if the party so depositing, whose money shall have been credited as aforesaid, shall prove before such a Court that the deposit was necessary in order to protect any lien he had on the estate or share or part thereof, the amount so credited shall be added to the amount of the original lien.

Separation of shares held in common, by opening separate account.

10. When a recorded sharer of a joint estate, held in common tenancy, desires to pay his share of the Government revenue separately, he may submit to the Collector a written application* to that effect.

The application must contain a specification of the share held in the estate by the applicant.

The Collector shall then cause to be published in his own office, in the Court of the Judge, Magistrate (or Joint Magistrate, as the case may be), and Munsifs, and in the police-thánás in whose jurisdiction the estate or any part thereof is situated, as well as on some conspicuous part of the estate itself, a copy of the application made to him.

If, within six weeks from the date of the publication of these notices, no objection is made by any other recorded sharer, the Collector shall open a se-

* As to fees chargeable on applications under s. 10, see Ben. Act III. of 1862, s. 3.

Act XI. of 1859.

parate account* with the applicant, and shall credit separately to his share all payments made by him on account of it. The date on which the Collector records his sanction to the opening of a separate account shall be held to be that from which the separate liabilities of the share of the applicant commence.

Separation of shares consisting of specific portions of land, by opening separate account.

11. When a recorded sharer of a joint estate, whose share consists of a specific portion of the land of the estate, desires to pay his share of the Government revenue separately, he may submit to the Collector a written application† to that effect. The application must contain a specification of the land comprised in his share, and of the boundaries and extent thereof, together with a statement of the amount of sadr jama heretofore paid on account of it.

On the receipt of this application, the Collector shall cause it to be published in the manner prescribed for publication of notice in the last preceding section.

In the event of no objection being urged by any recorded co-sharer within six weeks from the time of publication, the Collector shall open a separate account‡ with the applicant, and shall credit separately to his share all payments made by him on account of it.

The date on which the Collector records his sanction to the opening of a separate account shall be held to be that from which the separate liabilities of the share of the applicant commence.

If objection be made, parties to be referred to Civil Court.

12. If any recorded proprietor of the estate, whether the same be held in common tenancy or otherwise, object that the applicant has no right to the share claimed by him, or that his interest in the estate is less or other than that claimed by him, or if the application be in respect of a specific portion of the land of an estate, that the amount of sadr jama stated by the applicant to have been heretofore paid on account of such portion of land is not the amount which has been recognized by the other sharers as the jama thereof, the Collector shall refer the parties to the Civil Court, and shall suspend proceedings until the question at issue is judicially determined.

Sale of separate shares.

13. Whenever the Collector shall have ordered a separate account or accounts to be kept for one or more shares, if the estate shall become liable to sale for arrears of revenue, the Collector or other officer as aforesaid in the first place shall put up to sale only that share or those shares of the estate from which, according to the separate accounts, an arrear of revenue may be due.

In all such cases notice of the intention of excluding the share or shares from which no arrear is due shall be given in the advertisement of sale prescribed in section 6 of this Act. The share or shares sold, together with the share or shares excluded from the sale, shall continue to constitute one integral estate, the share or shares sold being charged with the separate portion, or the aggregate of the several separate portions, of jama assigned thereto.

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* As to opening a separate account under s. 10, see Ben. Act VII. of 1876, s. 69.

† As to fees chargeable on applications under s. 11, see Ben. Act VII. of 1876, s. 69.

‡ As to opening a separate account under s. 11, see Ben. Act VII. of 1876, s. 69.

14. If, in any case of a sale held according to the provisions of the last preceding section, the highest offer for the share exposed to sale shall not equal the amount of arrear due thereupon to the date of sale, the Collector or other officer as aforesaid shall stop the sale, and shall declare that the entire estate will be put up to sale for arrears of revenue at a future date, unless the other recorded sharer or sharers, or one or more of them, shall, within ten days, purchase the share in arrear by paying to Government the whole arrear due from such share.

Entire estate may be sold under certain conditions.

If such purchase be completed, the Collector or other officer as aforesaid shall give such certificate and delivery of possession as are provided for in sections 28 and 29 of this Act to the purchaser or purchasers, who shall have the same rights as if the share had been purchased by him or them at the sale:

If no such purchase be made within ten days as aforesaid, the entire estate shall be sold, after notification for such period and publication in such manner as is prescribed in section 6 of this Act.

15.* If any recorded proprietor or co-partner of an estate shall deposit with the Collector money, or Government securities endorsed and made payable to the order of the Collector, and shall sign an agreement pledging the same to Government by way of security for the jama of the entire estate, and authorizing the Collector to apply, to the payment of any arrear of revenue that may become due from that estate, the whole or any portion of the said money or securities that may be necessary for that purpose, then, in the case of any arrear of revenue due from the said estate not being paid before sunset of the latest day of payment fixed under section 3 of this Act, the Collector shall apply to the payment of such arrear the said money or securities, or such part thereof or of any interest due on the said securities, as may be necessary; and for this purpose the Collector shall first apply any money that may be in his hands and any interest that may be due upon such securities, and may then sell and transfer the securities for any balance that may remain.

Deposit for protection of estate from sale.

And, so long as any money or securities as aforesaid, sufficient to cover any arrear that may fall due, shall remain and be available as aforesaid, the estate, for the protection of which the said deposit was made, shall be exempted from sale for arrears of revenue.

All moneys and securities so deposited shall be exempt from attachment otherwise than in execution of a decree of a Civil Court.

16.* It shall be competent to the person making a deposit under the provision of the last preceding section, or his representative or assignee, at any time to withdraw the deposit, and to revoke the pledge of the same.

Withdrawal of deposit.

17.† No estate shall be liable to sale for the recovery of arrears which have accrued during the period of its being under the management of the Court of Wards; and no estate, the sole property of a minor or minors, and descended to him or them by the regular course of inheritance duly notified to the Collector for the information of the Court of Wards, but of which the Court of Wards has not as-

Estates under Court of Wards or under attachment.

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* As to fees chargeable on applications under ss. 15 and 16, see Ben. Act III. of 1862, s. 3.

† Part of s. 17, repealed by Ben. Act III. of 1881, has here been omitted.

Act XI. of 1859.

sumed the management under Regulation VI., 1822, shall be sold for arrears of revenue accruing subsequently to his or their succession to the same until the minor or minors, or one of them, shall have attained the full age of eighteen years.

And no estate held under attachment by the Revenue-authorities otherwise than by order of a judicial authority shall be liable to sale for arrears accruing whilst it was so held under attachment.

And no estate held under attachment or managed by a Revenue-officer, in pursuance of an order of a judicial authority, shall be liable to sale for the recovery of arrears of revenue accruing during the period of such attachment or management, until after the end of the year in which such arrears accrued.

Power to exempt from sale.

18. It shall be competent to the Collector or other officer as aforesaid, at any time before the sale of an estate or share of an estate shall have commenced, to exempt such estate or share from sale; and in like manner it shall be competent to the Commissioner of Revenue, at any time before the sale of an estate or share of an estate shall have commenced, to exempt such estate or share from sale, by a special order to the Collector or other officer as aforesaid to that effect in each case; and no such sale shall be legal if held after the receipt of such order of exemption:

Proviso.

Provided, however, and it is hereby enacted, that the Collector or other officer as aforesaid, or the Commissioner, shall duly record in a proceeding the reason for granting such exemption; and provided also that an order for exemption so issued by the Commissioner shall not affect the legality of a sale which may have taken place before the receipt by the Collector or other officer as aforesaid of the order of exemption.

Sales where to be made.

19. Sales shall ordinarily be made by the Collector or other officer as aforesaid in the land-revenue office at the sadr station of the district: Provided, however, that it shall be competent to the Board of Revenue to prescribe a place for holding sales other than such office whenever they shall consider it beneficial to the parties concerned.

Adjournment of sales.

20. In case the Collector or other officer as aforesaid shall be unable, from sickness, from the occurrence of a holiday, or from any other cause, to commence the sale on the day of sale fixed as aforesaid, or if, having commenced it, he be unable, from any cause, to complete it, he shall be competent to adjourn it to the next day following, not being Sunday or other close holiday, recording his reasons for such adjournment, forwarding a copy of such record to the Commissioner of Revenue, and announcing the adjournment by written proclamation stuck up in his kachahri; and so on, from day to day, until he shall be able to commence upon or to complete the sale; but, with the exception of adjournments so made, recorded, and reported, each sale shall invariably be made on the day of sale fixed in the manner aforesaid.

Order of selling.

21. On the day of sale fixed according to section 6 of this Act sales shall proceed in regular order; the estate to be sold bearing the lowest number on the taují or register in use in the Collector's office of the district being put up first, and so on, in regular sequence; and it shall not be lawful for the Collector or other officer as afore-

said to put up any estate out of its regular order by number, except where it may be necessary to do so on default of deposit, as provided in section 22 of this Act. Act XI. of 1859.

22. The party who shall be declared the purchaser of an estate or share of an estate at any such public sale as aforesaid shall be required to deposit immediately, or as soon after the conclusion of the sale of the estate or share as the Collector or other officer as aforesaid may think necessary, either in cash, Bank of Bengal notes, or post-bills, or Government securities, to be valued at the market-rate of the day, duly endorsed, twenty-five per cent. on the amount of his bid; and in default of such deposit the estate or share shall forthwith be put up again and sold.

Deposit on account of purchase-money.

23. The full amount of purchase-money shall be made good by the purchaser before sunset of the thirtieth day from that on which the sale of the estate or share of an estate bought by him took place, reckoning that day as one of the thirty; or if the thirtieth day be a Sunday or other close holiday, then on the first office day after the thirtieth; and in default of payment within the prescribed period as aforesaid, the deposit shall be forfeited to Government, the estate or share shall be re-sold, and the defaulting purchaser shall forfeit all claim to the estate or share, or to any part of the sum for which it may subsequently be sold.

Full payment of purchase-money.

And in the event of the proceeds of the sale which may be eventually consummated being less than the price bid by the defaulting bidder aforesaid, the difference shall be leviable from him by any process authorized for realizing an arrear of public revenue, and such difference shall be taken and considered to be a part of the purchase-money, and shall be dealt with in the manner hereinafter prescribed for the disposal thereof.

24. When default is made in the payment of purchase-money, a notification of the intended re-sale shall be published for the period and in the manner prescribed in section 6 of this Act, but such notification shall not be published until the expiration of three clear days after the day on which the default shall have occurred; and, if the payment or tender of payment of the arrear on account of which the estate or share was first sold, and of any arrear which may have subsequently become due, shall be made by or on behalf of the proprietor of the estate or share before sunset of the third day, the issue of the notification of re-sale shall be stayed. The rules contained in the last preceding section shall be applicable to every such re-sale:

Re-sale.

Provided that, if default of payment of purchase-money shall occur more than once, the amount to be recovered from the defaulting bidders shall be the difference between the highest bid and the proceeds of the sale eventually consummated, which amount may be levied in manner aforesaid from any of the defaulting bidders to the extent of the amount by which his bid exceeds the amount realized.

25. [*Repealed by Ben. Act VII. of 1868, s. 29.*]

26. It shall be competent to the Commissioner of Revenue, on the ground of hardship or injustice, to suspend the passing of final orders in any case of appeal from a sale, and to represent the case to the Board of Revenue, who, if they see cause, may recommend to the Local Government to annul the sale; and the Local Government in any such case may annul the sale, and cause the estate or share of an

Annulment of sale in special cases.

Act XI. of 1859.

estate to be restored to the proprietor on such conditions as may appear equitable and proper.

Sales when final.

27. All sales of which the purchase-money has been paid up as prescribed in section 23 of this Act, and against which no appeal shall have been preferred, shall be final and conclusive at noon of the sixtieth* day from the day of sale, reckoning the said day of sale as the first of the said sixty* days.

And sales against which an appeal may have been preferred and dismissed by the Commissioner shall be final and conclusive from the date of such dismissal, if more than sixty* days from the day of sale, or, if less, then at noon of the sixtieth* day as above provided.

Certificate of sales.

28. Immediately upon a sale becoming final and conclusive, the Collector or other officer as aforesaid shall give to the purchaser a certificate of title in the form prescribed in Schedule A annexed to this Act. And the said certificate shall be deemed in any Court of justice sufficient evidence of the title to the estate or share of an estate sold being vested in the person or persons named from the date specified; and the Collector shall also notify such transfer by written proclamation in his own office, and in the Courts of the Munsifs and police-thánás within whose jurisdictions any part of the estate or share sold shall be situated.

Delivery of possession.

29. The Collector or other officer as aforesaid shall order delivery of possession of the estate or share purchased to be made by removing any person who may refuse to vacate the same, and by proclamation to the occupants of the property by beat of drum, or in such other mode as may be customary, at some convenient place or places, and by affixing a copy of the certificate at the mál-kachahrí or in some conspicuous place of the estate or share of an estate purchased.

Liability of purchaser.

30. The party certified as the proprietor of an estate or share of an estate by purchase under this Act shall be answerable for all instalments of the revenue of Government which may fall due after the latest day of payment aforesaid.

Application for purchase-money.

31. The Collector shall apply the purchase-money, first, to the liquidation of all arrears due upon the latest day of payment from the estate or share of an estate sold; and, secondly, to the liquidation of all outstanding demands debited to the estate or share of an estate in the public accounts of the district; holding the residue, if any, in deposit on account of the late recorded proprietor or proprietors of the estate or share of an estate sold, or their heirs or representatives, to be paid to his or their receipt on demand in manner following: to wit, in shares proportioned to their recorded interest in the estate or share of an estate sold, if such distinction of shares were recorded, or, if not, then as an aggregate sum to the whole body of proprietors upon their joint receipt.

And if, before payment to the late proprietor or proprietors of any surplus that may remain of the purchase-money, the same be claimed by any creditor in satisfaction of a debt, such surplus shall not be payable to such claimant, nor shall it be withheld from the proprietor, except under precept of a Civil Court.

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* The words "sixtieth" and "sixty" in s. 27 have been substituted for the words "thirtieth" and "thirty" respectively by Ben. Act VII. of 1868, s. 4.

32. The annulment by a Commissioner or by Government of a sale made under this Act shall be publicly notified by the Collector or other officer as aforesaid in the same manner as the becoming final and conclusive of sales is required to be notified by section 28 of this Act; and the amount of deposit and balance of purchase-money shall be forthwith returned to the purchaser with interest thereon at the highest rates of the current public securities; which shall be paid by the Government, unless the proprietor shall have become liable for the same under the provisions of section 25 or section 26 of this Act.

Notification of annulment of sale.

33. No sale for arrears of revenue or other demands realizable in the same manner as arrears of revenue are realizable, made after the passing of this Act, shall be annulled by a Court of justice, except upon the ground of its having been made contrary to the provisions of this Act,* and then only on proof that the plaintiff has sustained substantial injury by reason of the irregularity complained of: and no such sale shall be annulled upon such ground, unless such ground shall have been declared and specified in an appeal made to the Commissioner under section 25 of this Act: and no suit to annul a sale made under this Act shall be received by any Court of justice, unless it shall be instituted within one year from the date of the sale becoming final and conclusive as provided in section 27 of this Act: and no person shall be entitled to contest the legality of a sale, after having received any portion of the purchase-money:

Jurisdiction of Civil Courts in suits to annul sales.

Provided, however, that nothing in this Act contained shall be construed to debar any person, considering himself wronged by any act or omission connected with a sale under this Act, from his remedy in a personal action for damages against the person by whose act or omission he considers himself to have been wronged.

Proviso.

34. If a sale made under this Act be annulled by a final decree of a Civil Court, application for the execution of such decree shall be made within six months after the date thereof; otherwise the party in whose favour such decree was passed shall lose all benefit therefrom.

Effects of annulment of sales by decree of Court.

And no order for restoring such decree-holder to possession shall be passed until any amount of surplus purchase-money that may have been paid away by order of a Civil Court be repaid by him, with interest at the highest rate of the current Government securities.

And if such party shall neglect to pay any amount so recoverable within six months from the date of such final decree, he shall lose all benefit therefrom.

35. In the event of a sale being annulled by a final decree of a Court of justice, and the former proprietor being restored to possession, the purchase-money shall be refunded to the purchaser by Government, together with interest at the highest rate of the current public securities.

If sale annulled, purchase-money to be refunded.

36. Any suit brought to oust the certified purchaser as aforesaid on the ground that the purchase was made on behalf of another person not the certified purchaser, or on behalf, partly of himself, and partly of another person, though, by agreement, the name of the certified purchaser was used, shall be dismissed with costs.

Dismissal of suit brought to oust purchaser on ground that purchase was made for another.

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* See 5 B. L. R. 135.

Act XI. of 1859.

37. The purchaser of an entire estate in the permanently-settled districts of Bengal, Bihár, and Orissa, sold under this Act for the recovery of arrears due on account of the same, shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement, and shall be entitled to avoid and annul all under-tenures, and forthwith to eject all under-tenants, with the following exceptions :—

Rights of purchaser of permanently-settled estate sold for its own arrears.

First.—Istimrárí or mukarrarí tenures which have been held at a fixed rent from the time of the permanent settlement.

Secondly.—Tenures existing at the time of settlement, which have not been held at a fixed rent :

Provided always that the rents of such tenures shall be liable to enhancement under any law for the time being in force for the enhancement of the rent of such tenures.

Thirdly.—Taluqdárí and other similar tenures created since the time of settlement and held immediately of the proprietors of estates and farms for terms of years so held, when such tenures and farms have been duly registered under the provisions of this Act.

Fourthly.—Leases of lands whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds have been made, or wherein mines have been sunk.

And such a purchaser as is aforesaid shall be entitled to proceed in the manner prescribed by any law for the time being in force for the enhancement of the rent of any land coming within the fourth class of exceptions above made, if he can prove the same to have been held at what was originally an unfair rent, and if the same shall not have been held at a fixed rent, equal to the rent of good arable land, for a term exceeding twelve years, but not otherwise :

Provided always that nothing in this section contained shall be construed to entitle any such purchaser as aforesaid to eject any raiyat having a right of occupancy at a fixed rent or at a rent assessable according to fixed rules under the laws in force, or to enhance the rent of any such raiyat otherwise than in the manner prescribed by such laws, or otherwise than the former proprietor, irrespectively of all engagements made since the time of settlement, may have been entitled to do.

Proviso.

38. The following rules for the registration of taluqdárí and other similar tenures created since the time of settlement, and held immediately of the proprietors of estates and of farms for terms of years so held, shall be observed.

Registration of certain tenures and farms.

39. There shall be two sets of registers, one for common registry and one for special registry.

Common and special registry.

Common registry shall secure such tenures and farms against any auction-purchaser at a sale for arrears of revenue except the Government.

Special registry shall secure such tenures and farms against any auction-purchaser at a sale for arrears of revenue including the Government.

40. The holder of any taluqdárí or other similar tenure, such as is described in section 38 of this Act, desirous of registering it, shall apply by petition to the Collector of the district to which the estate belongs.

Application for registry.

The application* shall state which description of registry is desired, and shall contain the following particulars so far as the same are ascertainable :—

(1) the pargana or parganas in which the tenure is situated ;

(2) the nature of the tenure ;

(3) the name or names of the village or villages whereof the land is composed, or wherein it is situated ;

(4) the area of the land comprised in the tenure, with its boundaries in complete detail ;

(5) the amount of rent payable annually for the tenure, and whether the rent is fixed for a term of years or in perpetuity, and the duties, if any, required to be performed on account of it ;

(6) the date of the deed constituting the tenure, or the date when the tenure was created ;

(7) the name of the proprietor who created the tenure ;

(8) the name of the original holder of the tenure ;

(9) the name of the present possessor, and if he be not the original holder, the mode in which he succeeded to the tenure, whether by inheritance, gift, purchase, or otherwise, and whether he holds jointly or solely.

Holders of such farms as are described in the said section may apply in like manner for registry of the same.

The application shall contain such of the foregoing particulars as are applicable to farms.

Procedure on application for common registry.

41. When the application is for common registry, the Collector shall serve a notice on the recorded proprietor or proprietors of the estate in which the tenure or farm is situated, or the authorized agent of such proprietor or proprietors, with a copy of the application annexed ; and shall cause a notice, with a copy of the application annexed, to be affixed in his office, and at the mál-kachahrí of the estate in which the tenure or farm is situated, or in such other place or places as in the opinion of the Collector may be best suited to give publicity to the application, requiring the proprietor or any party interested, within thirty days from the issue of the said notice, to file any objections he may have to the registry of the tenure or farm, or to any statement contained in the application.

If within the limited time no objection is made, the Collector shall register the tenure or farm.

If within the limited time an objection is made by any recorded proprietor, or by any party interested not being a proprietor, the Collector shall examine the person so objecting or his authorized agent, and if it shall appear to him that such person has probable ground of objection, the Collector shall suspend proceedings, and shall refer the parties to the Civil Court, otherwise he shall grant the application.

If the decision of the Civil Court be in favour of the applicant, the Collector, on the presentation of a copy of the final decree, shall register the tenure or farm.

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* As to time limited for applications under s. 40 for registry of tenures, and as to fees chargeable, see Ben. Act III. of 1862, ss. 2 and 3.

Act XI. of 1859.

Procedure on application for special registry.

42. When the application is for special registry, the Collector shall serve and issue the notices prescribed in the last preceding section.*

If within the limited time no objection is made, the Collector shall cause any enquiry that he may deem necessary for the security of the Government revenue to be made; and if he is satisfied that the Government revenue of the parent estate is sufficiently secured so far as it may be affected by the tenure or farm in question, he shall report the case to the Commissioner, who, if also satisfied on that point, shall direct the tenure or farm to be registered according to the application, otherwise the application shall be rejected.

If within the limited time any recorded proprietor, or any party interested not being a proprietor, object to the registry, the Collector shall examine the person so objecting or his authorized agent, and, if it shall appear to him that such person has probable ground of objection, shall suspend proceedings, and shall refer the parties to the Civil Court, otherwise he shall proceed as if no objection had been made.

If the decision of the Civil Court be in favour of the applicant, the Collector, on the presentation of a copy of the final decree, shall proceed as above provided for cases in which no objection is made within the limited time.

Registration of leases of certain lands.

43. Leases of lands of the description specified in the fourth exceptional class in section 37 may be registered, at the option of the holders, in the manner and under the rules hereinbefore provided for the registry of taluqdárí and other similar tenures.

Registration of old tenures.

44. Tenures of the first and second exceptional classes in section 37 may be registered at the option of the holders, and when so registered shall be entered only in the special register.†

Application for such registry shall contain the particulars specified in section 40, so far as the same are ascertainable, and notices shall be served and issued in the manner prescribed in section 41.

If within the limited time no objection is made by any recorded proprietor or by any party interested not being a proprietor, the Collector shall make such enquiries as may be necessary to satisfy him as to the validity of the tenure, and if the result be to satisfy him that the tenure is valid, he shall report the case to the Commissioner, who, if also satisfied that the tenure is valid, shall direct it to be entered in the special register, otherwise the application for registry shall be rejected.

If within the limited time any recorded proprietor or other party as aforesaid object to the registry of the tenure, the Collector shall examine the person so objecting or his authorized agent, and, if it shall appear to him that such person has probable ground of objection, shall suspend proceedings, and refer the parties to the Civil Court, otherwise he shall proceed as if no objection had been made.

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* As to the registration of rent-free tenures in the manner laid down in s. 42, see Ben. Act VIII. of 1876, s. 96.

† As to time limited for applications for registry of tenures and as to fees chargeable, see Ben. Act III. of 1862, ss. 2 and 3.

If the decision of the Civil Court be in favour of the applicant, the Collector, on the presentation of a copy of the final decree, shall proceed as above provided for cases in which no objection is made within the limited time :

Proviso.

Provided always that nothing contained in this section shall be understood as rendering registration necessary for the protection of *bonâ-fide* tenures of the description herein referred to.

45. [*Repealed by Ben. Act III. of 1862, s. 1.*]

Expenses of measurement, survey, or local enquiry.

46. The actual expenses of any measurement, survey, or local enquiry made under sections 42 and 44 of this Act, shall be borne by the party who applies for the registry of his tenure or farm ; and such party may be required by the Collector from time to time to make such advances on this account as he may consider necessary.

Civil Court not competent to order entry in special register.

47. No Civil Court shall be competent to order the Revenue-authorities to enter any tenure or farm in the special register :

Provided always that the refusal of the Revenue-authorities so to register any tenure or farm shall not affect the title of the holder, whatever it may be.

Suit for cancelment of registry of tenure or farm.

48. Subject to the general law of limitation any person thinking himself wronged by the registry of a tenure or farm may file a suit for the cancelment of the same.

Proceedings of Revenue-authorities in registration of tenures, &c.

49. In the execution of their functions in the registration of tenures and farms under this Act, all subordinate Revenue-authorities shall proceed in accordance with the general instructions which they may receive from the superior Revenue-authorities to whom they are subordinate, and from the Local Government ; and all orders passed under the sections aforesaid shall be open to appeal in usual course.

The order of a Commissioner for the special registry of a tenure under the provisions of this Act shall be open at any time within one year from the date of registry to revision by the Board of Revenue or the Local Government, on the ground of the Government revenue not having been sufficiently secured, or of the invalidity of the tenure, as the case may be.

Effect of entry in special register.

50. Entry in the special register shall be an effectual protection of the tenure or farm so registered, unless, in a suit instituted by Government in a Civil Court within the period allowed for suits for the recovery of the public revenue, a decree be passed pronouncing the registration to have been obtained by fraud, to the injury of the Government revenue :

Provided that a tenure or farm in the hands of a *bonâ-fide* purchaser for value shall not be avoided by reason of such fraud.

But the tenure or farm shall be liable to such amount of rent as would have been fair and equitable at the time of the special registry thereof, such amount to be fixed by the Collector.

Protection of taluqdâri tenures pending enquiry in case of sale of parent estate for arrears of revenue.

51. Tenures and farms of the third exceptional class described in section 37 of this Act, for the special registration of which application shall be made within the prescribed time, and in respect of which the Collector shall have commenced the enquiry prescribed in section 42,

Act XI. of 1859.

shall, in case of the sale of the parent estate for arrears of revenue, be protected pending the duration of such enquiry, and shall be protected eventually by registration, if the final award of the Revenue-authorities upon such application be in favour of the claimant.

Rights of purchaser of estate not permanently settled sold for its own arrears.

52. The purchaser of an estate in a district not permanently settled, sold under this Act for the recovery of arrears due on account of the same, shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement, and shall be entitled to avoid and annul all tenures which may have originated with the defaulter or his predecessors, being representatives or assignees of the original engager, as well as all agreements with raiyats or the like, settled or accredited by the first engager or his representatives, subsequently to the last settlement, as well as all tenures which the first engager may, under the conditions of his settlement, have been competent to set aside, alter, or renew, saving always and except leases of lands whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds have been made, or wherein mines have been sunk, which leases or engagements shall, so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force and effect:

Provided that nothing contained in this section shall be construed to entitle any purchaser of land at a public sale for arrears of revenue to demand a higher rate of rent from any persons whose tenure or agreement may be annulled as aforesaid, than was demandable by the former proprietor, except in cases in which such persons may have held their lands under engagements, stipulating for a lower rate of rent than would have been justly demandable for the land, or in cases in which it may be proved that, according to the custom of the pargana, mauzá, or other local division, such persons are liable to be called upon for any new assessment, or other demand not interdicted by the regulations of Government.

Rights of purchaser being sharer in estate;

53. Excepting* sharers with whom the Collector, under sections 10 and 11 of this Act, has opened separate accounts, any recorded or unrecorded proprietor or co-partner, who may purchase the estate of which he is proprietor or co-partner, or who by re-purchase or otherwise may recover possession of the said estate, after it has been sold for arrears under this Act, and likewise any purchaser of an estate sold for arrears or demands other than those accruing upon itself, shall by such purchase acquire the estate subject to all its encumbrances existing at the time of sale, and shall not acquire any rights in respect to under-tenants or raiyats, which were not possessed by the previous proprietor at the time of the sale of the said estate.†

and of purchaser of estate not sold for its own arrears.

Rights of purchasers of shares of estate.

54. When a share or shares of an estate may be sold under the provisions of section 13 or section 14, the purchaser shall acquire the share or shares subject to all encumbrances, and shall not acquire any rights which were not possessed by the previous owner or owners.

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* Here certain words, repealed by Act XII. of 1891, Sch. I., have been omitted.

† 7 B. L. R. App. 52.

55. Arrears of rent which on the latest day of payment may be due to the defaulter from his under-tenants or raiyats shall, in the event of a sale, be recoverable by him after the said latest day by any process except distraint which might have been used by him for that purpose on or before the said latest day.

Recovery of arrears due to defaulters.

56. Any Collector or other officer as aforesaid conducting a sale under this Act shall be competent to punish any contempt committed in his presence in open kachahrí or office for the time being by fine to an extent not exceeding two hundred rupees, commutable, if not paid, to imprisonment in the civil jail for a period not exceeding one month: and the Magistrate to whom such an offender may be sent by a Collector or other officer as aforesaid, shall carry his sentence into effect:

Punishment for contempt.

Provided that an appeal from any order passed under this section shall lie to the Revenue Commissioner, whose decision shall be final.

57. A default to make good a bid by making the deposit required by section 22 of this Act shall be held to be a contempt.

Default as to deposit a contempt.

58. When an estate is put up for sale under this Act for the recovery of arrears of revenue due thereon, if there be no bid, the Collector or other officer as aforesaid may purchase the estate on account of the Government for one rupee, or if the highest bid be insufficient to cover the said arrears and those subsequently accruing up to the date of sale, the Collector or other officer as aforesaid may take or purchase the estate on account of the Government at the highest amount bid; in both which cases the Government shall acquire the property subject to the provisions of this Act.

Government may purchase at sale.

59. [*Repealed by Ben. Act III. of 1862, s. 1.*]

60. The provisions of Regulation VII., 1822, and Regulation IX., 1825, shall be in force in every estate in any part of which a measurement, survey, or local enquiry may be made under this Act, and in every estate purchased or taken on account of Government under this Act.

Regulations VII., 1822, and IX., 1825, in force in certain estates.

61. In the construction of this Act the word "Collector" shall include a Deputy Collector or other officer exercising, by the authority of Government, the powers of a Collector or Deputy Collector.

Interpretation.

62. The operation of this Act shall be confined to such parts of the Lower Provinces in the Presidency of Fort William in Bengal as are or shall be subject to the general Regulations of that Presidency.

Application of Act.

SCHEDULE A.

I certify that *A. B.* has purchased, under Act No. XI. of 1859, the mahál [*or* share of a mahál] specified below, standing in the taují of the district of , and that his purchase took effect on the day of [*being the day after that fixed for last day of payment*].

(Signed) *D. E.*,
Collector.

Act XII. of 1859.

SPECIFICATION.

(If of an entire mahál.)

Taují number
Name of mahál
Name of the former proprietor
Sadr jama

(If of a share of a mahál.)

Taují number of the entire mahál
Name of the entire mahál
Sadr jama of the entire mahál
Description of the share sold
Subordinate taují number of the share sold
Name of the former proprietor of the share sold
Sadr jama for which the share sold is separately liable.

SCHEDULE B.

FEES.

For filing an application under section 10 or section 11 for opening a separate account for a share of an entire estate—

If the annual jama of the share do not exceed two hundred and fifty rupees—25.

If the annual jama of the share exceed two hundred and fifty rupees and do not exceed one thousand rupees—at the rate of 10 per cent. upon the jama.

If the annual jama of the share exceed one thousand rupees—at the rate of ten per cent. upon one thousand rupees, and two per cent. upon all above that amount.

For filing an application for a deposit of money or Government securities under section 15—half per cent. on the amount deposited.

For any interest on Government securities so deposited, drawn by the Collector—half per cent. of the amount drawn.

For filing an application for withdrawal of a deposit under section 16—half per cent. of the amount withdrawn.

For filing an application under section 40, 43, or 44 for the registration of an under-tenure or farm—

If the annual rent of the under-tenure do not exceed five hundred rupees—25.

If the annual rent of the under-tenure exceed five hundred rupees and do not exceed one thousand rupees—at the rate of five per cent. upon the rent.

If the annual rent of the under-tenure exceed one thousand rupees—at the above rate up to one thousand rupees, and at one per cent. upon all above that amount.

ACT XII. OF 1859.

RECEIVED THE G.-G.'S ASSENT ON THE 4TH MAY 1859.

An Act to make better provision for the trial of Pilots at the Presidency of Fort William in Bengal for breach of duty.

Preamble.

WHEREAS it is expedient to amend the law for the trial of persons employed in the Pilot Service of Government at the Presidency of Fort William in Bengal when accused of breach

of duty, and to extend the same to persons licensed to act as pilots at the said Presidency; It is enacted as follows:— Act XII. of 1859.

1. [*Repealed by Act XIV. of 1870, s. 1.*]

Trial of pilots accused of breach of duty.

2. When any person employed in the Pilot Service of Government at the Presidency of Fort William in Bengal, or licensed to act as a pilot at the said Presidency, shall be accused of having committed any breach of duty while engaged in such service or acting under such license, and it shall appear to the Superintendent of Marine, or to the Lieutenant-Governor of Bengal, that such person ought to be brought to trial for such breach of duty, such person shall be brought to trial upon a charge or charges framed by the said Superintendent of Marine, or such other person as the said Lieutenant-Governor shall direct, before a Court constituted under the provisions of this Act.

Appointment of Judge.

3. The Lieutenant-Governor of Bengal shall appoint a fit person to be Judge of the said Court.

Appointment of prosecutor.

4. The Lieutenant-Governor shall appoint such person as he may think proper to conduct the proceedings before the Court as prosecutor on the part of Government.

Trial to be held before Judge and jury.

5. Every trial under this Act shall be held before the said Judge and a jury composed of two merchants of Calcutta, a master of a merchant-ship lying in the port of Calcutta, and a pilot of not less than twenty years' service.

Lists of merchants and pilots liable to serve on jury.

6. The Judge shall cause to be prepared and shall keep two separate lists, one containing the names of merchants, the other containing the names of pilots, liable to serve on such jury.

The names in each list shall be arranged in alphabetical order, and the place of abode and quality or business of each person named shall be stated.

Notice to prosecutor and accused of time and place for appointing jury.

7. When the Judge shall be about to hold a trial under this Act, he shall give notice to the prosecutor and to the party accused of a time and place to be fixed by the Judge for appointing a jury to serve at such trial.

Appointment of jury.

8. At the time and place mentioned in the notice, the Judge in the presence of the prosecutor and the person accused shall read over the names which first occur in each of the said lists of those merchants and pilots who, he has reason to believe, are present in Calcutta and capable of attending as jurors at the trial; and shall also propose the name of a master of a merchant-ship lying in the port of Calcutta, whom he deems qualified to serve on such jury.

If no objection be made and allowed, the persons so nominated shall be the jury to serve at the trial.

If the prosecutor or the party accused shall object to any of the persons named as jurors, he shall assign the grounds of his objection, and such objection shall forthwith be decided by the Judge.

If the objection be allowed, the Judge shall read from the said lists or propose (as the case may be) another name in the place of the one objected to, and the person so nominated shall serve on the jury, provided no objection to such person be made and allowed as aforesaid.

Act XII. of 1859.

9. When a jury has been appointed under the last preceding section, the Judge shall fix a day for the trial, and shall summon, by writing under his hand, the persons so appointed to sit as a jury.

Day of trial to be fixed, and summons to issue to jurors.

If any such person, when duly summoned, shall, without such excuse as the Judge shall allow to be sufficient, neglect or refuse to attend at the time appointed, or to remain in attendance, until the trial shall be completed, it shall be lawful for the said Judge to impose upon any such person a fine not exceeding two hundred rupees for every such default; and such fine, if not paid, shall be levied by distress and sale of the goods and chattels of the defaulter under a warrant to be issued for that purpose by the Judge.

Penalty for non-attendance.

Such warrant may be transmitted by the Judge to any Magistrate of police for the town of Calcutta, and thereupon such Magistrate shall endorse the same, and shall cause it to be executed in the same manner as if the warrant had been issued by such Magistrate.

10. If for any cause any of the persons summoned to attend as jurors shall not be in attendance at the time fixed for the commencement of the trial, the trial may, with the consent of the prosecutor and the party accused, be held before the Judge and such jurors as shall be in attendance.

Trial how to proceed if any juror does not attend.

If such consent be not given, the place of the absent juror shall be supplied by some other person selected by the Judge from the same profession or calling as the person originally summoned, and who shall consent to serve, provided no objection to such person be made and allowed in manner aforesaid.

If the parties or either of them do not consent that the trial shall be held before the Judge and such jurors as may be in attendance, and the place of the absent juror cannot be supplied by a person consenting to serve, the trial shall be postponed to another day, and the Judge shall either re-summon the same jury or appoint and summon another jury in the manner hereinbefore provided.

11. The Judge shall register in a book the names of all jurors mentioned in either of the said two lists who have attended and served on a trial held under this Act.

Register of jurors who have served.

A juror who has served shall not be required again to serve, and his name shall be excluded in reading over the jury-lists until all the persons named in the said lists who are present in Calcutta, and capable of attending as jurors shall have served.

12. [*Repealed by Act X. of 1873, s. 2.*]

13. It shall be lawful for the Judge of the said Court, at the instance of the prosecutor, or of the party accused, or of his own motion, by writing under his hand, to summon any person to attend as a witness at a time and place to be specified in the summons, for the purpose of being examined at any trial before the said Court: or if such person shall be about to depart from Calcutta, so as to be unable to attend at such trial without serious inconvenience, then to be examined before the Judge of the said Court before the day fixed for the trial; provided always

Judge may summon witnesses to attend at certain time and place.

Examination of witnesses about to leave Calcutta.

that due notice of the time and place of such examination shall be given to the accused party; provided also that such witness may nevertheless be examined at the trial if he shall be able to attend thereat, in which case his previous examination may also be read at the trial.

Penalty for witnesses not attending or refusing to give evidence.

14. If any person who shall have been duly summoned to attend as a witness shall, without sufficient excuse, neglect or refuse to attend, or attending shall refuse to give evidence or to answer any question which may be lawfully put to him, such person shall forfeit and pay such fine, not exceeding five hundred rupees, as the Judge of the said Court shall order; and such fine, if not paid, shall be levied by distress and sale of the goods and chattels of the person ordered to pay the same in the manner prescribed in section 9 of this Act.

Power of Judge to issue warrant for arrest of person whose evidence necessary.

15.* (*1*) Whenever the Judge of the said Court thinks it necessary for obtaining evidence that any person should be arrested, he may issue a warrant for his arrest, and may, for the purpose of effecting the arrest, authorize any officer (subject, nevertheless, to any general or special instructions from the Local Government) to enter any vessel.

(*2*) Any person so authorized may, for the purpose of enforcing the entry, call to his aid any officers of Police or Customs, or any other persons, and may seize and detain the vessel for such time as is reasonably necessary to effect the arrest; and every such officer or other person shall be deemed to be a public servant within the meaning of the Indian Penal Code, section 186.

(*3*) No person shall be detained under this section for more than forty-eight hours.

Verdict of jurors.

16. Upon the completion of the trial, the jurors shall give their verdict upon the charge, or, if there be more than one, upon each separate charge.

The verdict shall be according to the opinion of the majority of jurors. If the jurors are equally divided, the Judge shall declare his opinion, and the verdict shall be according to the opinion of the Judge and the jurors with whom he concurs.

Sentence if accused found guilty.

17. If by such verdict the accused person is found guilty of the charge or of any one or more of the charges preferred against him, the Judge of the Court shall sentence him to be dismissed from the said pilot-service, or to have his license withdrawn, or shall award such other punishment, by loss of rank or pay, or by change of a license from a higher to a lower grade, or suspension from employment for a specified period, as to the Judge shall appear fit.

Preparation of schedule of offences and punishments.

The Lieutenant-Governor of Bengal, with the sanction of the Governor-General in Council, may prepare a schedule of offences and punishments (such punishments being of the same nature as those hereinbefore mentioned) for the guidance of the said Court; and if such schedule be prepared and sanctioned, and the charge

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* S. 15 has been added by Act VI. of 1883, s. 1; the original s. 15 was repealed by Act X. of 1873, s. 2.

Act XII. of 1859. proved before the said Court is an offence specified in such schedule, the Judge of the said Court shall award such punishment as is prescribed for such offence in the said schedule, and no other.*

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*SCHEDULE OF OFFENCES AND PUNISHMENTS PREPARED IN ACCORDANCE WITH SECTION 17, ACT XII. OF 1859.

Offences through Unskilfulness, Neglect, &c., when in Pilotage-charge.

1. Any pilot who, when in pilotage-charge of any vessel, shall, through unskilfulness, negligence, or other default, allow such vessel to ground, or cause injury, by collision or otherwise, to the vessel in his charge or to any other vessel, shall be punished by suspension or reduction of pay for a term not exceeding twelve months, or by a reduction either in steps or grade.

2. If in any case the loss of any vessel is the consequence of any of the offences above described, the pilot shall also be liable to dismissal.

3. Any pilot who shall unnecessarily cut or slip, or cause to be cut or slipped, any cable belonging to any vessel under his pilotage-charge, shall be punished by suspension or reduction of pay for a term which may extend to three months.

4. Any pilot who shall, either through unskilfulness, neglect, or other default, cause damage to any floating light-vessel, buoy, or beacon, shall be punished by suspension or reduction of pay for a term which may extend to three months, and shall also be liable to make good the damage caused.

5. Any pilot who shall be asleep when in pilotage-charge of any vessel under weigh, or who shall fail to attend, whether by day or by night, to the swinging of the vessel of which he may be in pilotage-charge, shall be punished with suspension or reduction of pay for a term not exceeding six months.

6. Any pilot who shall be drunk when in pilotage-charge of any vessel shall be punished by dismissal.

Offences against Discipline or Departmental Rules.

7. Any pilot who shall refuse to take pilotage-charge of a vessel when ordered to do so by competent authority, or who shall improperly throw up pilotage-charge of any vessel, or who shall quit the vessel of which he is in pilotage-charge without the consent of the master or commanding officer, before the service for which he was engaged has been performed, shall be punished with suspension or reduction of pay for a period which may extend to twelve months, or by dismissal.

8. Any pilot who shall be drunk on board a pilot-vessel, or when on general duty (otherwise than in pilotage-charge), shall be punished with suspension or reduction of pay for a term which may extend to twelve months, and for any repetition of the offence shall be liable to dismissal.

9. Any pilot who shall be guilty of disobedience of orders shall be punished with suspension or reduction of pay for a term which may extend to twelve months, or by reduction in steps or grade, or by dismissal.

10. Any pilot who shall be found guilty of insubordination or disrespect to a superior officer shall be punished with suspension or reduction of pay for a term which may extend to six months.

11. Any pilot who shall assault his superior officer when on duty may be punished in addition to any penalty to which he may be liable under the Penal Code, by dismissal or by suspension or reduction of pay for a term not exceeding twelve months, or by reduction of grade.

12. Any pilot who shall, when in command of a pilot-vessel, neglect to attend to the proper maintenance, discipline, or navigation of such vessel, or any pilot who shall wilfully waste, destroy, or misapply public stores and property, shall be punished with suspension or reduction of pay for a term which may extend to twelve months, or by dismissal.

13. Any pilot who shall be guilty of any breach of rules duly promulgated by proper authority for his guidance as a pilot, and the punishment for which is not already laid down in this schedule, shall be punished with suspension or reduction of pay for a term not exceeding twelve months, or by reduction in steps or grade, or by dismissal.

If by such verdict as aforesaid the accused person is found not guilty of the charge or charges preferred against him, the Judge shall declare him acquitted of the same.

Acquittal.

18. The proceedings of the Court shall be sent by the Judge to the Superintendent of Marine for submission to the Lieutenant-Governor of Bengal; and no sentence of punishment pronounced by the Judge of the said Court shall be final until it has been approved of by the said Lieutenant-Governor.

No sentence final till approved by Government.

The said Lieutenant-Governor may remit the whole or any part of such sentence, or may direct the substitution of any mitigated punishment in lieu of the punishment awarded by the said Court, as he shall think fit.

Government may remit sentence or mitigate punishment.

19. If it shall appear to the Judge of the said Court that the verdict of the jurors is manifestly contrary to the evidence, or that the trial is otherwise insufficient, the Judge, instead of passing sentence on the accused person, or declaring him acquitted, as the case may be, may certify the same to the Lieutenant-Governor of Bengal, and the said Lieutenant-Governor may either order a new trial before another jury, or acquit the accused person, as he shall think fit.

If verdict of jurors be manifestly contrary to evidence, or trial otherwise insufficient.

20. It shall be lawful for the Lieutenant-Governor of Bengal to make such rules as he shall think proper, not inconsistent with the provisions of this Act, for conducting the proceedings and regulating the practice of the said Court.*

Power to make rules.

Offences containing an Element of Moral Turpitude.

14. Any pilot who shall wilfully make a false report of the circumstances attending the grounding, collision, injuring, or loss of any vessel, or of the stores of any vessel, or on any point connected with his duty as a pilot, or who shall make or cause to be made a false muster-roll, or a false entry in the log-book of any pilot-vessel, or who shall wilfully neglect to make the proper entries in the log-book of such vessel when he is in duty bound to make them, shall be punished with suspension for a term not exceeding twelve months, or by dismissal.

15. Any pilot who shall commit, or connive at, any fraud, or offence against the laws relating to Customs or Excise, or who shall knowingly connive at the escape of any person against whom there has issued a warrant of arrest, shall be punished with suspension for a term not exceeding twelve months, or by dismissal.

N.B.—Reduction of pay is never to exceed one-half of the monthly salary or earnings.

The reduction of pay of an officer of the pilot-service when undergoing any of the punishments for which reduction of pay is inflicted under this schedule shall be the half of his earnings for the period for which he is punished.[1]

* RULES FOR THE COURT FOR THE TRIAL OF PILOTS UNDER ACT XII. OF 1859.

Rule 1.—Whenever it shall appear to the Lieutenant-Governor or the Superintendent of Marine that any person employed in the pilot-service of Government or any licensed pilot ought to be brought to trial under the provisions of the above-mentioned Act, the Superintendent of Marine shall frame the charge or charges upon which such pilot is to be tried, and transmit a copy of the same to the Judge of the Court, who shall thereupon issue a notice, of not less than one day's duration, in the Form No. 1 appended, calling upon the prosecutor on behalf of Government under the said Act and the party accused to attend on him at a place and time appointed, for the purpose of appointing a jury under the 7th and 8th sections of the said Act.

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1 This last para. has been substituted.—See Government of Bengal, General (Marine) Department Letter No. 4316, dated Dec. 14, 1878.

Act XII. of 1859.

Marine-authorities or Government may pass orders upon charge of breach of duty where trial unnecessary.

21. Nothing contained in this Act shall be held to restrict the marine-authorities or the Government from passing such orders as may be deemed proper upon any charge of breach of duty preferred against any person employed in the said pilot-service, when it shall not be deemed necessary that such person should be brought to trial for such breach of duty under the provisions of this Act.

Rule 2.—At the time and place appointed in the said notice, the Judge shall deliver to the prosecutor a copy of the charge or charges, and the accused shall be entitled to receive a copy thereof from the prosecutor on application.

Rule 3.—The jury having been appointed under the provisions of section 8 of the Act, the Judge shall, by a summons under his hand in Form No. 2, summon them to appear at a time and place to be fixed by him for the trial, and shall, by a summons in the Form No. 3, summon the accused to attend such trial; the time for such trial not being earlier than two days after the service of such summons. The summonses respectively shall be served either personally or by leaving the same at the place of business or of the last-known abode of the parties respectively.

Rule 4.—The course of proceedings at the trial shall be as follows or as near thereto as conveniently may be:—

The jury shall be sworn in the like manner as in the ordinary Courts of law.

The charge or charges shall then be read by the prosecutor. The defendant shall not be required to plead to such charge or charges, but the evidence shall be taken on the subject thereof, as though he had pleaded not guilty. The prosecutor shall then call the witnesses for the prosecution, who may be cross-examined by the accused, and re-examined and examined by the Judge and jury, according to the course and practice of the Supreme Court. The case for the prosecution having been closed, the accused shall be called upon for his defence. If not ready, the Judge may at his discretion grant the accused an extension of time or postponement, as the case may be. The accused in his defence may call witnesses on his part and address the Court either orally or in writing, and either before or after the examination of his witnesses. The prosecutor shall be entitled to cross-examine every witness for the defence, and the accused to re-examine such witness. At the close of the case for the accused, the prosecutor may address the Court in reply, if witnesses shall have been called by the accused in support of his statement; but not otherwise, unless by special permission of the Judge. The jury shall forthwith at the close of the case consider and deliver their verdict. Subject to section 19 of the said Act, the Judge may either pass sentence immediately or reserve his sentence, which sentence he may afterwards pass subsequently to the discharge of the jury.

Rule 5.—The forms for swearing the jury and the witnesses shall be as near those in use in the Supreme Court as may be.

Rule 6.—The Judge shall be at liberty to adjourn the Court for any specified object to such times and places, and from time to time, as he shall think necessary or expedient, and shall notify every such adjournment verbally to the jury, the prosecutor, and the accused, and any witnesses who shall be at such time in attendance, all of which several persons shall thereupon attend at every such adjourned time and place as though they had been specially summoned thereto.

Rule 7.—The summons to witnesses shall be in the Form No. 4 or as near thereto as may be, and the same shall be served personally in all cases if practicable, and, if not, shall be left at the place of business or abode of the party to whom it shall be addressed or on board the ship to which he belongs with any person on duty on board; and the Judge shall, on the application of either the prosecutor or the accused before the trial (or during the same if he shall see fit), sign and issue summonses for such witnesses as they may respectively require, which summonses shall be served in the manner above required by the prosecutor or the accused, as the case may be.

Rule 8.—In case it shall be made to appear to the Judge on an application by either the prosecutor or the accused that any material and necessary witness on any charge is about to leave the port of Calcutta, he shall issue to the parties so applying to him a summons for the attendance of such witness at some place and at the earliest reasonable time to be fixed in the summons, and the Judge shall thereupon immediately issue and send to the address of the other of such parties a notice in the Form No. 5 inviting his attend-

22. If any person licensed to act as a pilot when duly charged with breach of duty as aforesaid, shall refuse to submit himself to trial under the provisions of this Act, the license of such person shall be withdrawn, and he shall be incapable of being again licensed to act as a pilot at the said Presidency.

Withdrawal of license from licensed pilot.

23. The provisions of this Act shall extend to all persons employed in the pilot-service at the said Presidency and borne on the rolls of the Government establishment, whether such persons receive fixed salaries, or are remunerated by a portion of the pilotage charged on the vessels piloted by them, or in any other manner, and to all persons licensed to act as pilots at the said Presidency.

Act applicable to persons in pilot-service and to licensed pilots.

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ance at any such time and place on the occasion of the examination of any such witness to cross-examine him. In case of the non-attendance of such party after such notice, the Judge shall, on its being made to appear satisfactorily to him that such notice has reached the place of business or abode of such party, proceed with such examination without his attendance.

Rule 9.—The accused shall be allowed the assistance of a friend or professional adviser in the conduct of his defence, and such friend or professional adviser may, with the consent of the Judge, address the Court on the trial in lieu of the accused, provided the latter be present. But the Judge shall not recognize any written application relative to the trial or other proceedings except directly from the accused himself, and in no trial or other proceedings in which the accused himself is absent, shall the agency of such friend or professional adviser be admitted or recognized, unless in the case of illness of the accused supported by medical certificate, when on a written request by him to the Judge authorizing the appearance of any person on his behalf, the proceedings may be carried on in the presence of such person as though the accused were himself present.

Rule 10.—In cases of collision, where the pilots of both colliding vessels are brought to trial, there shall be one trial for both, or a separate trial for each, according as the Judge in his discretion may determine.

Rule 11.—In case the accused shall not appear at the trial, and shall not satisfy the Judge that he has a reasonable cause for not appearing, the Court shall be at liberty to proceed in his absence to hear and determine the charge preferred against him; and the Judge may pass sentence thereon in such and the same manner as he might have done in case the accused had appeared and been arraigned in person on the said charge. Provided that in case the accused shall present himself before the conclusion of the trial, he shall be at liberty to cross-examine such witnesses as still remain to be examined on the part of the prosecution, and to make his defence to the charge or charges preferred against him in the usual manner, but shall not be at liberty, except by leave of the Judge, to re-open any of the proceedings which shall have taken place in his absence.

Rule 12.—Any application on behalf of a person summoned on a jury or as a witness or a defendant on any trial, and seeking to be excused attendance on the ground of illness, must be supported by a medical certificate addressed to the Judge of the Court at the earliest opportunity.

Rule 13.[1]—It shall be optional with the Judge to deliver a formal charge to the jury; but if he do deliver such charge, he shall record it, and forward the same to Government with the record of the case. If no formal charge is delivered, the Judge shall sum up the facts of the case, and analyse the evidence bearing on them in a written judgment, which shall form part of the record for submission to Government. When the Judge differs from the jury, the grounds for his opinion must be fully and clearly stated. The jury or the Judge shall be at liberty to have recorded on the proceedings such remarks connected with, or arising out of, the case as they may desire to bring to the notice of the authorities.

Rule 14.—Questions of law or procedure not herein specially provided for shall be determined so far as is practicable and reasonable in accordance with the rules of the Supreme Court in regard to similar or analogous matters.

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[1] Rule 13 has been substituted by Government of Bengal, General (Marine) Department Resolution, dated Dec. 10, 1878.

Act XIII. of 1859.

ACT XIII. OF 1859.*

RECEIVED THE G.-G.'S ASSENT ON THE 4TH MAY 1859.

An Act to provide for the punishment of breaches of contract by Artificers, Workmen, and Labourers in certain cases.

Preamble.

WHEREAS much loss and inconvenience are sustained by manufacturers, tradesmen, and others in the several Presidency-towns of Calcutta, Madras, and Bombay, and in other places, from fraudulent breach of contract on the part of artificers, workmen, and labourers who have received money in advance on account of work which they have contracted to perform; and whereas the remedy by suit in the Courts for the recovery of damages is wholly insufficient, and it is just and proper that persons guilty of such fraudulent breach of contract should be subject to punishment; It is enacted as follows:—

Complaint to Magistrate if workman neglect to perform work for which he has received advance.

1. When any artificer, workman, or labourer shall have received from any master or employer resident or carrying on business in any Presidency-town,† or from any person acting on behalf of such master or employer, an advance of money on account of any work which he shall have contracted to perform, or to get performed by any other artificers, workmen, or labourers, if such artificer, workman, or labourer shall wilfully, and without lawful or reasonable excuse, neglect or refuse to perform, or get performed, such work according to the terms of his contract, such master or employer, or any such person as aforesaid, may complain to a Magistrate of Police, and the Magistrate shall thereupon issue a summons or a warrant, as he shall think proper, for bringing before him such artificer, workman, or labourer, and shall hear and determine the case.

Magistrate may order repayment of advance or performance of contract.

2. If it shall be proved to the satisfaction of the Magistrate that such artificer, workman, or labourer, has received money in advance from the complainant on account of any work, and has wilfully, and without lawful or reasonable excuse, neglected or refused to perform, or get performed, the same according to the terms of his contract, the Magistrate shall, at the option of the complainant, either order such artificer, workman, or labourer, to repay the money advanced, or such part thereof as may seem to the Magistrate just and proper, or order him to perform, or get performed, such work according to the terms of his contract; and, if such artificer, workman, or labourer, shall fail to comply with the said order, the Magistrate may sentence him to be imprisoned with hard labour for a term not exceeding three months, or, if the order be for the repayment of a sum of money,

Penalty if workman fail to comply with order.

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* Cf. 4 Geo. IV., c 34.

Act XIII. of 1859 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	See *Gazette of India*	Oct. 22, 1881, Pt. I., p. 504.
Coorg	Ditto	Dec. 28, 1878, Pt. I., p. 747.

† Certain words, which were repealed by Act XVI. of 1874, have been omitted.

for a term not exceeding three months, or until such sum of money shall be sooner repaid; provided that no such order for the repayment of any money shall, while the same remains unsatisfied, deprive the complainant of any civil remedy by action or otherwise which he might have had but for this Act.

Magistrate may require workman to give security for due performance of order.

3. When the Magistrate shall order any artificer, workman, or labourer to perform, or get performed, any work according to the terms of his contract, he may also, at the request of the complainant, require such artificer, workman, or labourer to enter into a recognizance, with sufficient security, for the due performance of the order; and, in default of his entering into such recognizance or furnishing such security to the satisfaction of the Magistrate, may sentence him to be imprisoned with hard labour for a period not exceeding three months.

To what contracts Act extends.

4. The word "contract," as used in this Act, shall extend to all contracts and agreements, whether by deed, or written or verbal, and whether such contract be for a term certain, or for specified work, or otherwise.

Act may be extended by Government.

5. This Act may be extended by the Governor-General of India in Council or by the Executive Government of any Presidency or place to any place within the limits of their respective jurisdictions.* In the event of this Act being so extended, the powers hereby vested in a Magistrate of Police shall be exercised by such officer or officers as shall be specially appointed by Government to exercise such powers.

ACT XX. OF 1859.

RECEIVED THE G.-G.'S ASSENT ON THE 31ST AUGUST 1859.

An Act for the suppression of outrages in the district of Malabar in the Presidency of Fort St. George.†

Preamble.

WHEREAS, in the district of Malabar, in the Presidency of Fort St. George, murderous outrages have been frequently committed by persons of the class called Mápillas,‡ the offenders in such outrages intending therein to sacrifice their own lives; and the general law of the country is not adequate to suppress such outrages; It is enacted as follows:—

1. [*Repealed by Act XIV. of 1870.*]

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* Extended to the Panjáb, July 13, 1859: to all Collectorates in the Bombay Presidency, *Bombay Government Gazette*, 1860, p. 594: to Sindh, *ibid.*, Dec. 4, 1873, p. 1000: to the District of Nimár, *Calcutta Gazette*, 1862, p. 2980: to town and cantonment of Rangoon, by Notification, dated Dec. 30, 1865: to Pegu Division of Lower Burma, by Notification, dated July 13, 1861—see *Calcutta Gazette*, p. 2340: to Tenasserim Division of Lower Burma, by Notification, dated Oct. 14, 1861—see *Calcutta Gazette*, 1861, p. 3189: to Arakan Division of Lower Burma, by Notification, dated Jan. 25, 1864—see *Calcutta Gazette*, 1864, p. 45: to Jubbulpore and Saugor, by Notification, dated Aug. 16, 1859—see *Calcutta Gazette*, 1859, p. 1954: to the military cantonment and zila of Puna—see *Bombay Government Gazette*, dated Sep. 8, 1859, Vol. II., p. 269.

† Continued by Mad. Act VII. of 1869.

‡ "Mápilla, lit. the son (pilla) of his mother (má), as sprung from the intercourse of foreign colonists, who were persons unknown, with Malabar women."—WILSON.

Act XX. of 1859.

Power to declare whole or part of Malabar under Act.

2. It shall be lawful for the Governor in Council of Fort St. George, whenever he shall see fit, by a proclamation published in the *Fort St. George Gazette*, from time to time to declare the whole or any part or parts of the district of Malabar to be subject to the operation of all or any of the following provisions.

Forfeiture of property of Máppillas convicted of outrages.

3. Any Máppilla who murders or attempts to murder any person, or who takes part in any outrage directed by Máppillas against any persons wherein murder is committed, or is attempted to be committed, or is likely to be committed; and any person who shall procure or promote the commission of any such crime as aforesaid, or shall incite or encourage any other person or persons to commit the same; or who, after having committed, or having been accessary to, any such crime as aforesaid, shall forcibly resist any person or persons having lawful authority to apprehend him; or who shall join or assist, or incite or encourage other persons to join or assist, in such resistance; shall, on conviction thereof, be liable not only to the punishment provided by law for the offence of which he may be convicted, but also to the forfeiture of all his property, of whatever kind, to Government, by the sentence of the Court by which he is tried;

Of persons killed in committing outrages.

and whenever any person shall be killed in the act of committing any such offence as aforesaid, or being wounded and taken prisoner in the act of committing any such offence as aforesaid, shall afterwards die of his wounds, it shall be competent to the Court which would have had cognizance of the offence if the offender could have been brought to trial, to proceed, on the application of the Magistrate, to hold an inquest into the circumstances of the death of the offender; and on proof of his having been killed as aforesaid, or of his having died of wounds received as aforesaid, to adjudge that the whole of his property shall be forfeited to Government.

Of immoveable property of offender.

4. All immoveable property of the offender which shall be alienated after the passing of this Act, and before the commission of any offence specified in section three, shall be forfeited in the same manner as if no such alienation had been made, unless the same shall have been made more than twelve months before the commission of the offence.

Disposal of bodies of offending Máppillas.

5. If any Máppilla shall be sentenced to death for any capital offence, punishable also with forfeiture of property under this Act, it shall be lawful for the Court by which such offender is convicted, by its sentence to direct the body of such offender to be burned or buried within the precincts of the jail, as it shall see fit; and in like manner, if any Máppilla shall be killed in the act of committing any such offence as aforesaid, or, having committed any such offence as aforesaid, shall be killed in resisting a lawful attempt to apprehend him, it shall be lawful for the Magistrate to cause the body of the person so killed to be burned or buried within the precincts of the jail, as the said Magistrate shall see fit.

Powers of Governor in Council as to confinement or trial.

6. The Governor in Council shall have, with respect to the confinement or trial of any person charged with or suspected of an intention to commit any offence punishable under this Act, the powers which are vested in him by any law regarding the

The Schedule

(See s. 19 A).

Certain offences punishable under Ch. XVI & XVII I.P.C.

Ch. XVI

ss. 299, 307, 308, 310, 322, 324, 326, 327, 328, 329, 332, 333.

Ch. XVII

ss. 382, 383, 385, 386, 387, 390, 391, 393, 394, 397, 398, 399, 402, 458, 459, 460.

confinement or trial of persons charged with or suspected of State offences; and the provisions of any such law shall be applicable to all cases in which the Governor in Council shall proceed under the authority of this section. Act XX. of 1859.

Procedure for Magistrate in respect to suspected persons.

7. The Magistrate of the district may cause any Máppilla or other person against whom there are, in his judgment, grounds of proceeding under the last section to be apprehended, and, after such enquiry as he may think necessary, may detain such Máppilla or other person in safe custody, until he shall have received the orders of the Governor in Council, to whom, in all such cases, he shall report his proceedings without unnecessary delay.

Penalty for remaining or returning within forbidden limits.

8. If, with the previous consent of the Governor in Council, any person against whom the Governor in Council shall think fit to proceed under section six, shall undertake, in consideration of the suspension of such proceedings, to depart within a specified period from within the limits of the Continent of India or of any part thereof, and shall, in breach of his said undertaking, and without the permission of the Governor in Council, remain or return within such limits, he shall be liable to be punished with imprisonment with or without hard labour for a period which may extend to seven years, or with fine, or both.

Levy of compensation or fine.

9. Whenever any such outrage as is specified in section three of this Act, the same being punishable under this Act, shall, after such proclamation as aforesaid, have been committed by any Máppilla or Máppillas, it shall be lawful for the Magistrate, with the sanction of the Governor in Council, to levy such sum of money as the Governor in Council shall authorize, from all the Máppillas within the amsham* or the several amshams to which the perpetrator or perpetrators, or any one of such perpetrators, of such outrages shall be found to belong, or wherein any such perpetrator shall have been resident at the time of the commission of the outrage, and also within the amsham in which the outrage shall have been committed; and the said Magistrate shall assess the proportions in which the said sum shall be payable upon the several heads of families of Máppillas within such amsham or amshams, according to his judgment of their respective means; and the said Magistrate shall appropriate the sum so levied as follows, that is to say, in the first place, to the compensation of the parties aggrieved by such outrages, including therein compensation to the family of any person dying by any such outrage for the pecuniary loss occasioned or likely to be occasioned by such death; and, subject to such compensation, to the use of the Government.

Penalty on Máppilla inhabitants of amsham refusing to deliver up offender.

10. Whenever any such outrage as is specified in section 3 of this Act, the same being punishable under this Act, shall have been committed by any Máppilla or Máppillas, it shall be lawful for the Magistrate to call upon the Máppilla inhabitants of the amsham or amshams to which the perpetrator or perpetrators or any one of such perpetrators of such outrage shall be found to belong, or wherein any such perpetrator shall have been resident at the time of the commission of the outrage, or wherein any such perpetrator shall, after the perpetration of any such outrage, be found, to deliver up such perpetrator or perpetrators, and on the failure of such Máppilla inhabitants to comply with such call so made upon them by the Magistrate, it shall be lawful for the Ma-

* Skr. अंश *amça*, part, share.

Act XXIV. of 1859.

gistrate, with the sanction of the Governor in Council, to levy from such Máppilla inhabitants such sum of money as the Governor in Council shall authorize as prescribed in the last preceding section of this Act, and all sums so levied shall be appropriated in the manner prescribed in that section.

11. All fines and pecuniary liabilities incurred under this Act may be levied by a Magistrate under summary process, in the same manner as the public revenue may be realized by a Collector; and no action shall lie in any Civil Court against the Magistrate in respect of any fine imposed or any assessment made under this Act, or in respect of the levy of any portion of such fine from the person or persons upon whom the same shall have been assessed.

Fines, &c., how levied.

12. It shall be lawful for the Governor in Council, by such proclamation as aforesaid, from time to time to withdraw from the operation of the provisions of this Act any part or parts of the said district which he may previously have declared to be subject thereto; and in like manner, as occasion shall require, to subject the same part or parts again to the operation of such provisions, or of any of them.

Power to withdraw parts of Malabar from Act.

13. *Duration of Act.*—[*Repealed by Mad. Act VII. of 1869.*]

ACT XXIV. OF 1859.*

RECEIVED THE G.-G.'S ASSENT ON THE 6TH SEPTEMBER 1859.

An Act for the better regulation of the Police within the territories subject to the Presidency of Fort St. George.

WHEREAS it is expedient to make the police-force throughout the Madras Presidency a more efficient instrument at the disposal of the Magistrate for the prevention and detection of crime, and to re-organize the police-force and improve the condition of the village-police; It is enacted as follows:—

Preamble.

1. The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction (that is to say),—

Interpretation.

The word "Magistrate" shall include all persons, within their respective jurisdictions, exercising all or any of the powers of a Magistrate:

The word "subordinate," as applied to police-functionaries, shall mean District Superintendents and their Assistants:

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* Act XXIV. of 1859 has been declared to be in force in the whole of the Madras Presidency, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 4.

Act XXIV. of 1859 has been extended to the taluqs of Bhadrachalam and Rakapili in the Godavári District, by Notification No. 1150, dated Oct. 3, 1879, published in the *Gazette of India*, Oct. 4, 1879, Pt. I., p. 630, and in the *Fort St. George Gazette*, Oct. 21, 1879, Pt. I., p. 722.

As to the application of Act XXIV. of 1859 to the police in the Town of Madras, see Mad. Act VIII. of 1867, ss. 2, 3, 4, and 8. Mad. Acts V. of 1865 and I. of 1885 are to be read with, and taken as part of, this Act. For further provisions, see Mad. Acts I. of 1881 (ss. 2 and 11) and III. of 1882.

The word "police" shall include general and village-police, cuttoobadies,* kavilgárs, and all other persons by whatever name known, who exercise any police-functions throughout the Madras Presidency:

The expression "general police district" shall embrace all districts to which the operation of this Act shall be extended:

The word "property" shall include any chattel, money, or valuable security:

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number:

Words importing the masculine gender shall include females:

The word "person" shall include Company or Corporation:

The word "month" shall mean calendar month:

The word "cattle" shall, besides horned cattle, include elephants, camels, horses, asses, mules, sheep, goats, and swine.

1-3. [*Repealed by Act XIV. of 1870.*]

Superintendence vested in Governor in Council.

4. The superintendence of the police throughout the general police district shall vest in, and be exercised by, the Governor in Council, and, except as authorized by him under the provisions of this Act, no person, officer, or Court shall be empowered to appoint, supersede, or control any police-functionary, any Regulation, Act, or usage to the contrary notwithstanding.

Inspector-General of Police, &c.

5. The administration of the police throughout the general police district shall be vested in an officer to be styled the Inspector-General of Police for the Presidency of Madras, and in such subordinates as to the Governor in Council shall seem fit, who shall from time to time be appointed by the Governor in Council, and may be removed by the same authority, and who shall receive such salary as the Governor-General of India in Council shall allow.

Powers of police, &c.

6. All powers not inconsistent with the provisions of this Act, which up to the passing of this Act belonged by law to the existing police-authorities, shall be vested in the police-authorities appointed under this Act: Provided always that no police-functionary so appointed shall possess or exercise any judicial or revenue authority.

Inspector-General to be Justice of the Peace.
His powers.
District Superintendent may be Magistrate.
His powers.

7. The Inspector-General of Police shall be appointed a Justice of the Peace; he shall also have the full powers of a Magistrate throughout the general police district, but shall exercise these powers subject to such orders as may from time to time be issued by the Governor in Council. The Governor in Council may vest any District Superintendent of Police with all or any of the powers of a Magistrate within such limits as he may deem proper; but such Superintendent shall exercise the powers with which he shall be so invested only so far as may be necessary for the preservation of the peace, the prevention of crime, and the detection, apprehension, and detention of offenders in order to their being brought

* This probably means kattubadi-peons, who are paid for their services by grants of land at a quit-rent.

Act XXIV. of 1859.

before a Magistrate, and as far as may be necessary for the performance of the duties assigned to him by this Act.

Constitution of force.

8. The entire police-establishment of the Madras Presidency shall, for the purposes of this Act, be deemed to be one police-force,* and shall be formally enrolled, and shall consist of such number of officers and men, and shall be otherwise constituted in such manner, as shall be from time to time ordered by the Governor in Council with the sanction of the Governor-General of India in Council.

Inspector-General to control force and make rules.

9. The Inspector-General may, from time to time, subject to the approval of the Governor in Council, frame such orders and regulations as he shall deem expedient, relative to the general government and distribution of the force, the places of residence, the classification, rank, and particular service of the members thereof; their inspection, the description of arms, accoutrements, and other necessaries to be furnished to them; to the collecting and communicating intelligence and information; and all such other orders and regulations relative to the said police-force as the said Inspector-General shall, from time to time, deem expedient for preventing abuse or neglect, and for rendering such force efficient in the discharge of all its duties.

Appointment and dismissal of police-officers.

10. The appointment of all police-officers shall, under such rules as the Governor in Council shall from to time sanction, rest with the Inspector-General of Police and the Deputy Superintendents, who may, under such rules as aforesaid, at any time dismiss, suspend, or fine, to any amount not exceeding one month's pay, any police-officer whom they shall think remiss or negligent in the discharge of his duty, or otherwise unfit for the same.

Police-officers to receive certificates of office.

11. Every person so appointed shall receive on his enrolment a certificate (A) under the seal of the Inspector-General, by virtue of which he shall be vested with the powers, functions, and privileges of a police-officer. Such certificate shall cease to have effect whenever the person named in it is suspended or dismissed, or otherwise removed from employment in the police-force, and shall thereupon be immediately surrendered to his superior officer, or other person empowered to receive it.

12. [*Repealed by Act XVI. of 1874.*]

Additional police-officers employed at cost of individuals.

13. It shall be lawful for the Inspector-General of Police, or any District Superintendent, if they shall think fit, on the application of any person showing the necessity thereof, to depute any additional number of police-officers to keep the peace at any place within the general police district, at the charge of the person making the application, but subject to the orders of the said Inspector-General or District Superintendent, and for such time as they shall think fit; provided always that it shall be lawful for the person on whose application such deputation shall have been made, on giving one month's notice in writing to the Inspector-General or District Superintendent, to require that the officers so appointed shall be discontinued: such person shall be relieved from the charge of such additional force from the expiration of such notice.

* As to the police-force employed in military cantonments, see Mad. Act I. of 1866, s. 12.

Additional force in neighbourhood of railway and other works.

14. Whenever any railway, canal, or other public work, shall be carried on, or be in operation, in any part of the country, and it shall appear to the Inspector-General that the appointment of an additional police-force in such neighbourhood is rendered necessary by the behaviour or reasonable apprehension of the behaviour of the persons employed upon such work, it shall be lawful for the Inspector-General, with the consent of the Governor in Council, to direct the employment of such additional force, and to maintain the same so long as such necessity shall continue; and to make orders from time to time upon the treasurer or other officer having the control or custody of the funds of any Company carrying on such works, for the payment of the extra force so rendered necessary as aforesaid.

Payment for support of additional police-force.

15. All monies paid in respect of such additional force as is mentioned in the two last preceding sections shall be paid into a fund to be called the "general police fund," and shall be applied to the maintenance of the police-force under such orders as the Governor in Council may pass; and all sums of money payable under those sections shall be recoverable by suit in any competent Court, or by distress and sale of the goods of the defaulter under the warrant of a Magistrate.

Special police-officers.

16. When it shall appear that any tumult, riot, or outrage has taken place, or may be reasonably apprehended in any place, and that the ordinary officers appointed for preserving the peace are not sufficient for its preservation, and for the protection of the inhabitants, and the security of property in such place, it shall be lawful for any police-officer not below the rank of Inspector to apply to the nearest Magistrate to appoint so many of the public or village servants, or residents of the neighbourhood, as such police-officer may require to act as special police-officers for such time and in such manner as he shall deem necessary, and it shall be the duty of such Magistrate at once to comply with such applications.

Powers of special police-officers.

17. Every special police-officer so appointed shall have the same powers, privileges, and protection, and be liable to all such duties and penalties, and be subordinate to the same authorities, as the ordinary officers of police.

Punishment for refusal to serve.

18. If any person, being appointed a special police-officer as aforesaid, shall, without sufficient excuse, neglect or refuse to serve as such, or to obey such lawful order or direction as may be given him for the performance of his duties, he shall be liable, upon conviction before a Magistrate, to a fine not exceeding fifty rupees for such neglect, refusal, or disobedience.

Police-officers not to resign without leave or notice;

not to take other employment.

19. No police-officer shall be at liberty to resign his office, or withdraw himself from the duties thereof, unless expressly allowed to do so in writing by the District Superintendent, or unless he shall have given to his superior officer two months' notice in writing of his intention to do so. Nor shall any such police-officer engage in any employment or office whatever, other than his duties under this Act, unless expressly permitted to do so in writing under the seal of the Inspector-General.

Unlawful assumption of police-functions, personation of police, &c.

20. From and after the passing of this Act, every person not being, or having ceased to be, a duly enrolled police-officer, who shall unlawfully assume any function or power belonging to the police; and who shall not forthwith

Act XXIV. of 1859.

deliver up his certificate, and all the clothing, accoutrements, and appointments, and other necessaries which may have been supplied to him for the execution of his duty; or who shall have in his possession any distinctive article of the dress or appointment directed to be worn exclusively by the police-force, without being able to account satisfactorily for his possession thereof; or who shall put on the dress of any police-officer, or any dress designed to represent it, or to be taken for it; or who shall otherwise personate the character or act the part of any police-officer for any purpose whatever; shall, in addition to any other punishment to which he may be liable for any offence committed under the assumed character, be liable, on conviction before a Magistrate, to a penalty not exceeding two hundred rupees, or to imprisonment, with or without hard labour, for a period not exceeding six months, or both.

Duties of police-officers.

21. Every police-officer shall, for all purposes in this Act contained, be considered to be always on duty, and shall have the powers of a police-officer in every part of the general police district. It shall be his duty to use his best endeavours and ability to prevent all crimes, offences, and public nuisances; to preserve the peace; to apprehend disorderly and suspicious characters; to detect and bring offenders to justice; to collect and communicate intelligence affecting the public peace; and promptly to obey and execute all orders and warrants lawfully issued to him.

22 to **43**. [*Repealed by Act XVII. of 1862.*]

Penalties for neglect of duty, &c.

44. Every police-officer who shall be guilty of any violation of duty or wilful breach of any lawful orders and regulations not punishable under section ten of this Act; or who shall cease to perform the duties of his office, without leave, or without having given two months' notice as provided by this enactment, or engage, without authority, in any employment other than his police-duty; or who shall maliciously and without probable cause prefer any false, vexatious, or frivolous charge or information against any individual; or who shall knowingly and wilfully and with evil intent, exceed his powers; or shall be guilty of any wilful and culpable neglect of duty, in not bringing any person who shall be in his custody without a warrant before a Magistrate as hereinbefore provided; or who shall offer any unwarrantable personal violence to any person in his custody, shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay, or to imprisonment, with or without hard labour, not exceeding three months, or both.

Penalty for receiving unauthorized fees, &c.

45. Any police-officer who shall, on any pretext, or under any circumstances, directly or indirectly, collect or receive any fee, gratuity, diet-money, allowance, or recompense, other than he may be duly authorized by the Inspector-General or other officer acting under his order to collect or receive, shall, on conviction before a Magistrate, be liable to a penalty not exceeding six months' pay, or to imprisonment, with or without hard labour, not exceeding six months, or both.

Penalty for extortion, &c.

46. Any police-officer who shall, directly or indirectly, extort, exact, seek, or obtain any bribe or unauthorized reward or consideration, by any illegal threat or pretence, or for doing, or omitting or delaying to do, any act which it may be his duty to do or to cause to be done, or for withholding or delaying any information which he is bound to afford or to communicate, or who shall attempt to commit any of the offences above said, or shall be guilty of cowardice, shall be liable, upon

conviction before a Magistrate, to a fine not exceeding twelve months pay, or to imprisonment, with or without hard labour, not exceeding twelve months or both: Provided always that nothing in the three last preceding sections shall be deemed to preclude the Magistrate from committing for trial any cases of this nature too serious for his cognizance.

Committal by Magistrate of serious cases.

47. If any person shall assault or resist any police-officer in the execution of his duty, or shall aid or incite any other person so to do, or shall maliciously and without probable cause prefer any false or frivolous charge against any police-officer, such person shall, on conviction of such offence before any Magistrate, be liable to a fine not exceeding fifty rupees, or to imprisonment, with or without hard labour, not exceeding three months, or both.

Penalty for offences against police-officer.

48.* Any person who, within the limits of any town, or other place to which this section shall, by notification in the *Fort St. George Gazette*, be specially extended by Government,† commits any of the following offences, shall, on conviction before a Magistrate, be liable to a fine not exceeding fifty rupees,‡ or to imprisonment not exceeding eight days; and it shall be lawful for any police-officer to take into custody without warrant any person who within view commits any such offence:—

Penalty for certain offences within limits of towns.

Power to arrest without warrant.

First.—Any person who shall slaughter any cattle or clean any carcase in the streets; any person riding or driving any cattle recklessly and furiously, or training or breaking any horse or other cattle on or near any public road, to the danger of the passers:

Slaughtering cattle, furious riding, &c.

Second.—Any person who wantonly or cruelly abuses or tortures any animal:

Cruelty to animals.

Third.—Any person who shall keep any cattle, or conveyance of any kind, standing in any road or street longer than is required for loading or unloading, or for taking up or setting down passengers; or who shall leave any conveyance in such a manner as to cause inconvenience or danger to the public:

Obstructing passengers.

Fourth.—Any person exposing goods for sale on the road so as to obstruct passengers:

Exposing goods for sale on road.

Fifth.—Any person who throws or lays down any dirt, filth, rubbish, or any stones or building materials; or who constructs any pial, cowshed, stable, or the like within the bounds of any thoroughfare; or who causes any offensive matter to run from any house, factory, dung-heap, or the like into the street:

Throwing dirt into street.

Sixth.—Any person found in any thoroughfare drunk and riotous or incapable of taking care of himself:

Being found drunk in thoroughfare.

Seventh.—Any person who wilfully and indecently exposes his person, or any offensive deformity or disease, or commits nuisance by easing himself in, or by the side of, or near, any public street or thoroughfare; or by bathing or washing in any tank or reservoir, not being a place set apart for that purpose:

Indecent exposure of person.

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* S. 48 may be extended to Military Cantonments.—See Mad. Act I. of 1866, s. 13. Mad. Act I. of 1885 should be read with, and taken as part of, this Act.

† As amended by Mad. Act I. of 1872, s. 1.

‡ As to the procedure in enforcing fines under this section, see Mad. Act V. of 1865.

Act XXIV. of 1859.

Neglect to protect dangerous places.

Eighth.—Any person who neglects to fence in or duly to protect any well, tank, or other dangerous place or structure.

Regulation of public processions, &c., and of carriages and persons at places of public resort.

49. The Superintendent and superior officers of police may, as occasion requires, direct the conduct of all assemblies and processions, in the public roads, streets, or thoroughfares; prescribe the routes by which, and the times at which, such processions may pass; keep order in the public roads, streets, thoroughfares, ghâts and landing-places, and all other places of public resort; and prevent obstructions on the occasion of such assemblies and processions, and in the neighbourhood of places of worship during the time of public worship, and in any case when the roads, streets, or thoroughfares, ghâts or landing-places, may be thronged, or may be liable to be obstructed; they may also regulate the use of music in the streets on the occasion of native festivals and ceremonies, and may direct all crowds of twelve or more persons to disperse, when they have reason to apprehend any breach of the peace; and every person opposing or not obeying the orders so issued as aforesaid, or violating the conditions of such license, shall be liable to a fine not exceeding one hundred rupees:

Regulation of use of music in streets.

Provided always that nothing in this section contained shall be deemed to interfere with the general control of the Magistrate over such matters.

Saving of Magistrate's control.

50. In all cases of convictions under this Act, the Magistrate trying the case shall be restrained within the limits of his ordinary jurisdiction as to the amount of fine or imprisonment he may inflict; provided always that such charges against police-officers above the rank of a private shall only be adjudicated on by European functionaries, and that village-watchers alone shall be liable to conviction by heads of villages.

Jurisdiction.

Proviso as to charges against police-officers and village-watchers.

51. Nothing contained in this Act shall be construed to prevent any person from being prosecuted for any offence made punishable on conviction by this Act; or to prevent any person from being liable under any other law, Regulation, or Act to any other or higher penalty or punishment than is provided for such offence by this Act: Provided always that no person shall be punished twice for the same offence.

Liability to prosecution for higher penalties.

Proviso.

52.* All fines and penalties imposed, and all sums of money recoverable, under the authority of this Act, may, in case of non-payment thereof, be levied by distress and sale of the goods and chattels of the offender by warrant of the Magistrate.†

Levy of fines.

53. All actions and prosecutions against any person, which may be lawfully brought for anything done or intended to be done under the provisions of this Act, or under the general police-powers hereby given, shall be commenced within three months after the act complained of shall have been committed, and not otherwise; and notice in writing of such action and of the cause thereof shall be given to the defendant, or to the Superintendent or other superior officer of the district in which the act was

Limitation of action.

Notice.

* See Mad. Act V. of 1865, s. 1.

† Certain words, repealed by Act XVI. of 1874, have been omitted.

committed, one month at least before the commencement of the action ; and

Recovery by plaintiff.

no plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before such action brought or if a sufficient sum of money shall have been paid into Court after such action, brought by or on behalf of the defendant; and though a decree shall be given for the plaintiff in any such action, such plaintiff shall

Costs.

not have costs against the defendant, unless the Judge, before whom the trial shall be, shall certify his approbation of the action :

Provided always that no action shall in any case lie where such officers

Bar to action.

shall have been prosecuted criminally for the same act.

54. When any action, prosecution, or proceeding, shall be brought

Plea that act was done under warrant.

against any police-officer for any act done by him in such capacity, it shall be lawful for him to plead that such act was done by him under the authority of a warrant issued by a Magistrate ; and such plea shall be proved by the production of the warrant directing the act and purporting to be signed by a Magistrate. And the defendant

Decree for defendant. Proof of signature.

shall thereupon be entitled to a decree in his favour, notwithstanding any defect of jurisdiction in such Magistrate. And no proof of the signature of such official shall be necessary, unless the Court shall see reason to doubt its being genuine :

Saving of remedy against issuer of warrant.

Provided always that any remedy which the party may have against the authority issuing such warrant shall remain entire.

55. This Act shall take effect in any and every such district as the Go-

Operation of Act.

vernor in Council shall appoint by notification published in the official Gazette.

SCHEDULE.

[LAWS REPEALED AND AMENDED.]

[*Repealed by Act XIV. of 1870.*]

FORM A.

A. B. has been appointed a member of the police-force under Act XXIV. of 1859, and is vested with the powers, functions, and privileges of a police-officer.

Act IX. of 1860.

ACT IX. OF 1860.*

RECEIVED THE G.-G.'S ASSENT ON THE 12TH MARCH 1860.

An Act to make provision for the speedy determination of certain disputes between workmen engaged in railway and other public works and their employers.

WHEREAS it is expedient to make provision for the speedy determination of certain disputes between workmen engaged in railway and other public works and their employers; Preamble.

It is enacted as follows:—

1. It shall be lawful for the executive Government of any presidency or place within the British territories in India to invest any Magistrate or other officer exercising the powers of a Magistrate with power to enquire into and decide disputes on account of wages, hire of carriage, or the price of work, between any workmen employed in the construction of any railway, canal, or other public work, the construction of which is or shall be sanctioned by Parliament or by any such executive Government, and the person or persons by whom such workmen are employed. Government may empower any Magistrate to decide disputes as to wages or price of work.

2. Magistrates empowered to decide disputes under the preceding section shall have jurisdiction only in case the amount in dispute shall not exceed the sum of two hundred rupees.† Pecuniary limit of Magistrate's jurisdiction.

3. The executive Government shall fix, and may from time to time alter, the local limits of the jurisdiction of any Magistrate invested with jurisdiction under section 1 of this Act. A Magistrate so invested may hold a Court for the investigation of disputes of the nature described in the said section at any place within the local limits of his jurisdiction. Local limits of Magistrate's jurisdiction.

4. The rules for the institution of suits as provided in the Code of Civil Procedure ‡ shall, as far as circumstances will allow, be followed in the investigation of disputes under the preceding sections, and the procedure adopted shall be that provided for cases in which the suit may be disposed of at the first hearing. Procedure in investigation of disputes.

5. There shall be no appeal against any decision passed under this Act. No appeal.

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* Act IX. of 1860 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum . . . . . See *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504.

It has been declared in force in Upper Burma generally.—See the first part of the Second Schedule to Act XX. of 1886.

† In s. 2, certain words regarding the limitation of suits, which were repealed by the Limitation Act (IX. of 1871), have been omitted. For limitation, see now Act XV. of 1877, Sch. II., art. 4.

‡ See Act XIV. of 1882, s. 3.

6. The Magistrate, having heard and decided the case, shall make an order for the payment of such sum of money (if any) as shall appear to him to be justly due; and if the person ordered to pay shall make default in the payment of such sum immediately or within such time as the Magistrate shall direct, the Magistrate shall issue his warrant to levy the money by distress and the sale of the goods and chattels of the defaulter.

Order for payment.

Distress.

7. If any question shall arise whether any goods or chattels seized under the warrant of distress belong to the defaulter, or are liable to be distrained and sold as aforesaid, the same shall be determined in the manner provided by the said Act VIII. of 1859 for the determination of the like questions arising in the execution of decrees.

Questions as to property distrained.

8. Any person who shall voluntarily engage for a stipulated period to work on any railway, canal, or other public work, the construction of which is or shall be sanctioned in the manner specified in section 1 of this Act, or to execute any specific work in connection with such public work, and who shall wilfully, and without lawful or reasonable excuse, neglect or refuse to perform the work so stipulated for, shall be liable, on conviction before a Magistrate, to a fine not exceeding twenty rupees.

Penalty for workmen neglecting or refusing to work.

The Magistrate may, at the request of the complainant or of any one authorized to act on his behalf, instead of fining such person, order him to perform or get performed the work according to the terms of his contract or engagement; and if he shall fail to comply with the order, the Magistrate may, upon proof to his satisfaction of such non-compliance, sentence such person to be imprisoned, with or without hard labour, for any term not exceeding two months.

Power to order specific performance.

9. This Act shall take effect only in those districts or places to which it shall be extended by order of the Governor-General of India in Council, or of the executive Government of any Presidency or place.*

Operation of Act.

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* It has been extended to the Panjáb (May 9, 1860); to Nadiya, 24-Parganas, and Baraset—*Calcutta Gazette*, 1860, p. 1339; to the District of Nimar—*ib.*, 1862, p. 2980; and in the Bombay Presidency to the Districts of Ahmadnagar, Broach, Ahmadábád, Khándesh, Khaira, Púna, Sholapur, Surat, Tanna, by notifications dated respectively May 2, 1860, March 13, 1861, Nov. 12, 1861, and to the province of Sindh by Bombay Notification, dated July 30, 1873.—See *Sindh Official Gazette*, Aug. 9, 1873, Pt. I., p. 101.

Act XXI. of 1860.

ACT XXI. OF 1860.*

RECEIVED THE G.-G.'S ASSENT ON THE 21ST MAY 1860.

An Act for the Registration of Literary, Scientific, and Charitable Societies.

Preamble.

WHEREAS it is expedient that provision should be made for improving the legal condition of societies established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge, or for charitable purposes; It is enacted as follows:—

Societies formed by memorandum of association and registration.

1. Any seven or more persons associated for any literary, scientific, or charitable purpose, or for any such purpose as is described in section 20 of this Act, may, by subscribing their names to a memorandum of association, and filing the same with the Registrar of Joint-Stock Companies,† form themselves into a society under this Act.

Memorandum of association.

2. The memorandum of association shall contain the following things (that is to say)—

the name of the society:

the objects of the society:

the names, addresses, and occupations of the governors, council, directors, committee, or other governing body to whom, by the rules of the society, the management of its affairs is entrusted. A copy of the rules and regulations of the society, certified to be a correct copy by not less than three of the members of the governing body, shall be filed with the memorandum of association.

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* Act XXI. of 1860 (with the exception of the first four sections) is based on 17 & 18 Vic., c. 112.

It has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

West Jalpaiguri	See *Gazette of India*.	Mar. 5, 1881, Pt. I., p. 74.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	Oct. 22, 1881, Pt. I., p. 504.
The Jhánsí Division	Ditto	Aug. 31, 1878, Pt. I., p. 546.
The scheduled portion of the Mirzápur District	Ditto	May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	May 31, 1879, Pt. I., p. 302.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán	Ditto	Jan. 30, 1886, Pt. I., p. 48.
The District of Silhat	Ditto	Oct. 4, 1879, Pt. I., p. 631.

It has been extended, under the same Act, to the following Scheduled Districts:—

Sindh	See *Gazette of India*	Dec. 4, 1880, Pt. I., p. 672.
Kumáon and Garhwál	Ditto	Nov. 4, 1876, Pt. I., p. 606.
Ajmere and Merwára	Ditto	June 22, 1878, Pt. I., p. 380.

It has been declared, under the same Act, not to be in force in the Scheduled District of Lahaul.—See *Gazette of India*, May 1, 1886, Pt. I., p. 301.

† In s. 1, certain words referring to Act XIX. of 1857, which were repealed by Act XVI. of 1874, have been omitted. See now Act VI. of 1882, s. 255.

3. Upon such memorandum and certified copy being filed, the Registrar shall certify under his hand that the society is registered under this Act. There shall be paid to the Registrar for every such registration a fee of fifty rupees, or such smaller fee as the Governor-General of India in Council may from time to time direct; and all fees so paid shall be accounted for the Government.

Registration.

Fees.

4. Once in every year, on or before the fourteenth day succeeding the day on which, according to the rules of the society the annual general meeting of the society is held, or if the rules do not provide for an annual general meeting, in the month of January, a list shall be filed with the Registrar of Joint-Stock Companies, of the names, addresses, and occupations of the governors, council, directors, committee, or other governing body then entrusted with the management of the affairs of the society.

Annual list of managing body to be filed.

5. The property, moveable and immoveable, belonging to a society registered under this Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society, and in all proceedings, civil and criminal, may be described as the property of the governing body of such society by their proper title.

Property of society how vested.

6. Every society registered under this Act may sue or be sued in the name of the president, chairman, or principal secretary, or trustees, as shall be determined by the rules and regulations of the society, and, in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion; provided that it shall be competent for any person having a claim or demand against the society to sue the president or chairman, or principal secretary, or the trustees thereof, if on application to the governing body some other officer or person be not nominated to be the defendant.

Suits by and against societies.

7. No suit or proceeding in any Civil Court shall abate or discontinue by reason of the person by or against whom such suit or proceedings shall have been brought or continued, dying or ceasing to fill the character in the name whereof he shall have sued or been sued, but the same suit or proceeding shall be continued in the name of or against the successor of such person.

Suits not to abate.

8. If a judgment shall be recovered against the person or officer named on behalf of the society, such judgment shall not be put in force against the property, moveable or immoveable, or against the body of such person or officer, but against the property of the society.

Enforcement of judgment against society.

The application for execution shall set forth the judgment, the fact of the party against whom it shall have been recovered having sued or having been sued, as the case may be, on behalf of the society only, and shall require to have the judgment enforced against the property of the society.

9. Whenever, by any bye-law duly made in accordance with the rules and regulations of the society, or, if the rules do not provide for the making of bye-laws, by any bye-law made at a general meeting of the members of the society convened for the purpose (for the making of which the concurrent votes of three-fifths of

Recovery of penalty accruing under bye-law.

Act XXI. of 1860.

the members present at such meeting shall be necessary), any pecuniary penalty is imposed for the breach of any rule or bye-law of the society, such penalty, when accrued, may be recovered in any Court having jurisdiction where the defendant shall reside, or the society shall be situate, as the governing body thereof shall deem expedient.

Members liable to be sued as strangers.

10. Any member who may be in arrear of a subscription which, according to the rules of the society, he is bound to pay, or who shall possess himself of or detain any property of the society in a manner or for a time contrary to such rules, or shall injure or destroy any property of the society, may be sued for such arrear or for the damage accruing from such detention, injury, or destruction of property in the manner hereinbefore provided.

Recovery by successful defendant of costs adjudged.

But if the defendant shall be successful in any suit or other proceeding brought against him at the instance of the society, and shall be adjudged to recover his costs, he may elect to proceed to recover the same from the officer in whose name the suit shall be brought, or from the society, and in the latter case shall have process against the property of the said society in the manner above described.

Members guilty of offences punishable as strangers.

11. Any member of the society who shall steal, purloin, or embezzle any money or other property, or wilfully and maliciously destroy or injure any property of such society, or shall forge any deed, bond, security for money, receipt, or other instrument, whereby the funds of the society may be exposed to loss, shall be subject to the same prosecution, and, if convicted, shall be liable to be punished in like manner as any person not a member would be subject and liable to in respect of the like offence.

Societies enabled to alter, extend, or abridge their purposes.

12. Whenever it shall appear to the governing body of any society registered under this Act, which has been established for any particular purpose or purposes, that it is advisable to alter, extend, or abridge such purpose to or for other purposes within the meaning of this Act, or to amalgamate such society either wholly or partially with any other society, such governing body may submit the proposition to the members of the society in a written or printed report, and may convene a special meeting for the consideration thereof according to the regulations of the society;

but no such proposition shall be carried into effect unless such report shall have been delivered or sent by post to every member of the society ten days previous to the special meeting convened by the governing body for the consideration thereof, nor unless such proposition shall have been agreed to by the votes of three-fifths of the members delivered in person or by proxy, and confirmed by the votes of three-fifths of the members present at a second special meeting convened by the governing body at an interval of one month after the former meeting.

Provision for dissolution of societies and adjustment of their affairs.

13. Any number not less than three-fifths of the members of any society may determine that it shall be dissolved, and thereupon it shall be dissolved forthwith, or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the society, its claims and liabilities, according to the rules of the said society applicable thereto, if any, and, if not, then as the governing body shall find expedient; provided that, in the event of any dispute arising among the said governing body or

the members of the society the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the chief building of the society is situate, and the Court shall make such order in the matter as it shall deem requisite. Act XXI. of 1860.

Assent required.

Provided that no society shall be dissolved unless three-fifths of the members shall have expressed a wish for such dissolution by their votes delivered in person, or by proxy, at a general meeting convened for the purpose.

Government consent.

Provided that, whenever the Government is a member of, or a contributor to, or otherwise interested in, any society registered under this Act, such society shall not be dissolved without the consent of Government.

Upon a dissolution no member to receive profit.

14. If, upon the dissolution of any society registered under this Act, there shall remain, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the said society or any of them, but shall be given to some other society, to be determined by the votes of not less than three-fifths of the members present personally or by proxy at the time of the dissolution, or in default thereof, by such Court as aforesaid; provided, however, that this clause shall not apply to any society which shall have been founded or established by the contributions of shareholders in the nature of a Joint-Stock Company.

Clause not to apply to Joint-Stock Companies.

Member defined.

15. For the purposes of this Act a member of a society shall be a person who, having been admitted therein according to the rules and regulations thereof, shall have paid a subscription, or shall have signed the roll or list of members thereof, and shall not have resigned in accordance with such rules and regulations; but in all proceedings under this Act no person shall be entitled to vote or be counted as a member whose subscription at the time shall have been in arrear for a period exceeding three months.

Disqualified members.

Governing body defined.

16. The governing body of the society shall be the governors, council, directors, committee, trustees, or other body to whom by the rules and regulations of the society, the management of its affairs is entrusted.

Registration of societies formed before Act.

17. Any company or society established for a literary, scientific, or charitable purpose, and registered under Act XLIII. of 1850,* or any such society established and constituted previously to the passing of this Act, but not registered under the said Act XLIII. of 1850,* may at any time hereafter be registered as a society under this Act; subject to the proviso that no such company or society shall be registered under this Act unless an assent to its being so registered has been given by three-fifths of the members present personally, or by proxy, at some general meeting convened for the purpose by the governing body.

Assent required.

In the case of a company or society registered under Act XLIII. of 1850,* the directors shall be deemed to be such governing body.

* Repealed by Act X. of 1866, s. 219.

Act XXII. of 1860.

In the case of a society not so registered, if no such body shall have been constituted on the establishment of the society, it shall be competent for the members thereof, upon due notice, to create for itself a governing body to act for the society thenceforth.

Such societies to file memorandum, &c., with Registrar of Joint-Stock Companies.

18. In order to any such society as is mentioned in the last preceding section obtaining registry under this Act, it shall be sufficient that the governing body file with the Registrar of Joint-Stock Companies* a memorandum showing the name of the society, the objects of the society, and the names, addresses, and occupations of the governing body, together with a copy of the rules and regulations of the society certified as provided in section 2, and a copy of the report of the proceedings of the general meeting at which the registration was resolved on.

Inspection of documents.

Certified copies.

19. Any person may inspect all documents filed with the registrar under this Act on payment of a fee of one rupee for each inspection; and any person may require a copy or extract of any document, or any part of any document, to be certified by the Registrar, on payment of two annas for every hundred words of such copy or extract; and such certified copy shall be *primâ-facie* evidence of the matters therein contained in all legal proceedings whatever.

To what societies Act applies.

20. The following societies may be registered under this Act: charitable societies, the military orphan funds or societies established at the several Presidencies of India, societies established for the promotion of science, literature, or the fine arts for instruction, the diffusion of useful knowledge, the foundation or maintenance of libraries or reading-rooms for general use among the members or open to the public, or public museums, and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs.

ACT XXII. OF 1860.†

RECEIVED THE G.-G.'S ASSENT ON THE 21ST MAY 1860.

An Act to remove certain tracts on the eastern border of the Chittagong District from the jurisdiction of the tribunals established under the general Regulations and Acts.

Preamble.

WHEREAS it is expedient to remove the hilly and forest tracts of country situated on the eastern border of the district of Chittagong from the jurisdiction exercised by the Civil, Criminal, and Revenue Courts and offices of that district, under the general Regulations and Acts of the Government; It is enacted as follows:—

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* In s. 18 certain words referring to Act XIX. of 1857, which were repealed by Act XVI. of 1874, have been omitted. See now Act VI. of 1882, s. 255.

† Act XXII. of 1860 will be repealed by the Scheduled Districts Act (XIV. of 1874), when that Act is brought into force in the Hill Tracts of Chittagong.—See Act XIV. of 1874, s. 2, and Sch. II.

Certain tracts removed from operation of General Regulations and Acts.

1. The tracts of country described in the schedule to this Act are hereby removed from the jurisdiction of the Courts of civil and criminal judicature, and from the control of the offices of revenue constituted by the Regulations of the Bengal Code and the Acts passed by the Governor-General of India in Council and the Legislative Council of India, as well as from the system of procedure prescribed for the said Courts and offices by the Regulations and Acts aforesaid; and no Act hereafter passed by the Legislative Council of India relative to the constitution or procedure of the said Courts and offices shall be deemed to extend to any part of the said tract, unless the same be specially named therein.*

Administration of justice and collection of revenue vested in officers subject to control of Lieutenant-Governor of Bengal.

2.† The administration of civil and criminal justice, and the superintendence of the settlement and realization of the public revenue and of all matters relating to rent within the said tracts, are hereby vested in such officer or officers as the Lieutenant-Governor of Bengal may, for the purpose of tribunals of first instance or of reference and appeal, appoint; and the officer or officers so appointed shall, in the matter of the administration and superintendence aforesaid, be subject to the direction and control of the Lieutenant-Governor of Bengal, and be guided by such instructions as the Lieutenant-Governor of Bengal may from time to time issue.

Appeals.

3. It shall be lawful for the Lieutenant-Governor of Bengal to direct that an appeal may be heard in any of the matters described in the last preceding section by the Civil and Sessions Judge of Chittagong or the Commissioner of Revenue for that district, or by the Sadr Diwáni and Nizámat Adálat, or by the Board of Revenue, and to declare in what cases the order made by any officer or Court empowered by the Lieutenant-Governor to dispose of any of the matters aforesaid, shall be final.

Reference to Sadr Court.

4. It shall be lawful to the Lieutenant-Governor of Bengal to direct any officer empowered to administer criminal jurisdiction in or for the tracts aforesaid, to refer the sentence passed by him in any class of criminal trials for the confirmation of the Sadr Court; and no sentence of death passed by any person competent under the direction of the Lieutenant-Governor to pass such sentence shall be carried into execution until it be confirmed by the Sadr Court. In disposing of any trial referred for disposal under this section, the Sadr Court shall not call for the fatwá of its law-officer, and shall pass such order as it may deem just and proper, so as that it shall not convict any person acquitted by the referring officer, or enhance any sentence pronounced by him.

Place of imprisonment or transportation.

5. Any person liable to be imprisoned in any civil or criminal jail, or to be transported beyond sea under any order or sentence passed by any officer or Court empowered as provided in this Act, may be imprisoned in any civil or criminal jail, or transported to any place which the Lieutenant-Governor of Bengal may direct.

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* Here the proviso, repealed by Act XII. of 1891, Sch. I., has been omitted.

† For rules as to appeals, and for the administration of justice and the collection of revenue, see letters Nos. 3300 and 3301, dated June 20, 1860, from the Secretary to the Government of Bengal to the Superintendent of the Chittagong Hill Tracts and the Officiating Commissioner of the Chittagong Division respectively.

Act XXII. of 1860.

Questions of disputed boundary to be determined by Commissioner.

6. When a question shall arise whether any place falls within the tracts described in the schedule of this Act, it shall be competent to the Commissioner of Revenue for the district of Chittagong to consider and determine on which side of the described boundary the place aforesaid may lie, and the order made by the Commissioner shall be final.

7. [*Repealed by Act XVI. of 1874, s. 1.*]

SCHEDULE.*

The boundary of the tracts referred to in this Act, and to which the provisions of Act XXII. of 1860 shall be applicable, shall be understood generally to run to the eastward of the surveyed area of the villages situated on the eastern frontier of the Chittagong district, as surveyed and mapped in the course of the revenue-survey of that district, and shall be more particularly taken to be indicated as follows :—

As respects tháná Fatikchari, all the country lying east of the villages Rámgarh, Júzkola, Hápaniyá, Fakiráchang, Kanchanpur, and Gumáritalá.

As respects tháná Háthazári, all the country lying east of Magkatta, Rádhámádhabpur, and other surveyed villages of this tháná, and of a line drawn from the south-eastern boundary to Gográ in phári Ranganiyá.

As respects phári Ranganiyá, all the country lying to the east of Gográ, Nichintápur, Kodálá, Paduá, Dúdh-Pukuriyá, and other surveyed villages of this phári, situated on both sides of the Karnaphúli river.

As respects tháná Patiyá, all the country lying east of the surveyed villages of this tháná, that is to say, lying east of a line drawn from the eastern surveyed boundary of Dúdh-Pukuriyá in Phári Ranganiyá, drawn to the eastern surveyed boundary of the village Dúbáchari lying north of the river Shankhá.

As respects tháná Satkaniyá, all the country lying east of Púrangarh, Bardwárá, Andár Manik, Rájbári, and other surveyed villages of this tháná.

As respects tháná Chakariyá, all the country lying eastward of a line drawn from the village Rájbári in tháná Tulkaniyá, to the surveyed villages Bunú and Bilchari on the Mori river, in tháná Chakariyá, and also all the country lying eastward of the surveyed villages of this tháná between Bilchari and Páglábil.

As respects tháná Rámú, all the country lying east of a line drawn from Páglábil in tháná Chakariyá, to Idgarh, Garjáma, and Kachipiyá in tháná Rámú.

As respects tháná Tek-Náf, all the country lying east of a line drawn from Kachipiyá, in tháná Rámú, to Páglábil, Ratnápalong, Oáliyápalong, and Ukiya Ghát, as well as all to the east of the Náf river.

* This schedule has been substituted by Ben. Act IV. of 1863, s. 1.

ACT XXVIII. OF 1860.*

RECEIVED THE G.-G.'S ASSENT ON THE 29TH JUNE 1860.

An Act for the establishment and maintenance of boundary-marks, and for facilitating the settlement of boundary-disputes in the Presidency of Fort Saint George.

Preamble.

WHEREAS it is desirable, with a view to the better definition and security of landed property, the prevention of encroachments and disputes, and the identification of lands assessed to, or exempted from, the public revenue in the Presidency of Fort Saint George, that provision should be made for the establishment and maintenance of permanent marks to distinguish the boundaries of fields, holdings, estates, and villages, and for facilitating the settlement of boundary-disputes and claims; It is enacted as follows:—

1. [*Repealed by Act XIV. of 1870.*]

Power to fix boundaries and to require clearance of boundary-line and maintenance of marks.

2. It shall be lawful within the said Presidency for a Collector of land-revenue, or person exercising the powers of Collector, or for any Revenue Settlement Officer, and also for any other officer appointed by the Government for the purpose, whenever he may be of opinion that such demarcation is necessary for the prevention or adjustment of disputes (or for conducting and perpetuating a survey or a settlement of land-revenue), to fix the boundaries of fields, holdings, estates, or villages, and to require the owner or occupant of the field, holding, or estate, or the headman (by whatever name designated) of the village, to clear the boundary-line where overgrown with jungle, and also to set up, form, and maintain boundary-marks, of such materials, and in such number and manner, as may be determined by such officer under the direction of the Board of Revenue, or of the Director of Revenue Settlement, as the case may be, to be sufficient to distinguish the limits of the field, holding, estate, or village.

Power to require registry and production of title-deeds before survey.

3. It shall further be lawful for such officer aforesaid to call upon the owners or occupants of lands about to be surveyed, and also on all persons claiming to have any rights or interests in such lands, to register the rights and titles exercised or claimed by them in the lands, and to produce before him for inspection and registry all grants, title-deeds, and other documents connected with their claims.

Penalty for failure of owner, &c., to attend,

4. Any occupant or owner of land or other person whose attendance may be considered necessary for the purposes of this Act, who, on being summoned by such officer aforesaid, shall refuse or fail to attend at the demarcation, measurement, or assessment of his field, holding, or estate, or for the determining and marking the village-boundary, or for the investigation and registry of his rights and claims in relation to such holding, estate, or property, or for the investigation and determination of any boundary;

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* Act XXVIII. of 1860 has been declared to apply to the whole of the Madras Presidency, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 4. Extended to Coorg, 15th February 1865. Mad. Act II. of 1884 is to be read with, and taken as part of, Act XXVIII. of 1860.

Act XXVIII. of 1860.

and any person who shall wilfully make any false statement, or shall wilfully refuse or neglect, when called upon, to give any information in his power with respect to a boundary under enquiry,

and for false statement, &c.

shall be liable, by order of such officer aforesaid, to a fine not exceeding fifty rupees, to be levied by warrant under the hand of the officer imposing it, "in the manner provided by the law for the time being in force for the recovery of fines imposed by Criminal Courts."*

5. When a survey is in progress, notices shall be served on the persons owning or occupying the fields, holdings, estates, or villages concerned, requiring them to clear the boundaries, and to set up, form, or repair, or to render such aid and labour as may be necessary to form or repair, under the supervision of the Government officers, such boundary-marks as may be required, within a reasonable time; and, in the event of such persons not being found in their villages, the notice shall be posted in a conspicuous place in the village, which shall be held to be a sufficient service, notwithstanding it may afterwards appear that the owners or occupants were not correctly named or designated in the said notice.

Service of notices on owners and occupants.

6. In default of the owners or occupants of the fields, holdings, estates, or villages complying with such requisition, the said officer may give directions for the erection and repair of the necessary boundary-marks, the cost of which shall be equitably apportioned on the fields, holdings, estates, or villages which they serve to distinguish, and shall be charged to the persons possessing a right of ownership or occupancy in such fields, holdings, estates, or villages, in such manner as such officer aforesaid may consider just, and shall be levied in the same manner as arrears of land-revenue.

Power to erect or repair marks at expense of owners or occupants.

7. Whenever such owners or occupants of any fields, villages, holdings, or estates, may generally signify their wish for the boundary-marks to be erected on the part of Government and the cost to be charged to them, or where, in arrangements for the demarcation of the general survey of a village, estate, taluq, or district, it may appear to such officer aforesaid to be desirable to undertake the demarcation of lands under a uniform system by the officers of Government, the officer aforesaid may proceed, without the previous notice prescribed in section 5, to the clearing of boundaries and the erection and repair of the boundary-marks, and may recover the cost of the same, if unpaid, in the manner described in section 6.

Procedure when owners or occupants require erection of boundary-marks at their expense.

8. In the case of unoccupied fields, and of extensivs hills and jungles, in Government lands, the cost of marks for such fields, hills, and jungles, shall be charged to Government.

In case of unoccupied fields, &c., cost charged to Government.

9. Any person convicted before a Magistrate, or person exercising magisterial powers, of wilfully, and without lawful excuse, erasing, altering, removing, or injuring any boundary-marks whatsoever, whether established under this Act or otherwise existing, or any survey or other marks, or any marks set up for the purpose of the investigation or adjudication of disputes by an officer of Government or

Penalty for erasing, &c., marks.

* The words quoted have been substituted for the original by Act XII. of 1891, Sch. II.

any person acting under his orders, shall be liable to a fine not exceeding fifty rupees for each mark so erased, removed, or injured, of which fine a portion not exceeding one-half may be awarded to the informer, and the remainder shall be chargeable with the cost of restoring the mark; the fine to be levied in the mode prescribed above in section 4:

Reward for informer.

Provided always that a magisterial officer shall have power to impose a fine under this clause only to the amount to which he is competent to fine in misdemeanours under his general powers.

Extent of power to fine.

Whenever it may not be possible to detect the person who erased, altered, removed, or injured such boundary or survey-marks, the officer as aforesaid may give directions for the restoration or repair of the marks, and may order the cost thereof to be charged to the owners or occupants of the adjacent lands in such shares as may appear to him proper, or apportioned among the raiyats of the village in proportion to their land-assessment, as he may consider just and equitable, the same to be levied in the manner prescribed above in section 6.

Costs how recovered when offender is not known or is unable to pay.

10. If the parties interested in boundaries under dispute are desirous that the matter shall be referred to the final decision of one or more arbitrators, they may apply in writing to the settlement or other officer aforesaid, either in person or by their agents specially authorized on their behalf, and the settlement or other officer aforesaid shall proceed to dispose of the case as hereafter provided.

Application for reference to arbitration.

11. The arbitrator or arbitrators shall be nominated by the parties in such manner as may be agreed upon between them. If the parties cannot agree with respect to the nomination of the arbitrator or arbitrators, or if the person or persons nominated by them shall refuse to accept the arbitration, and the parties are desirous that the nomination shall be made by the settlement or other officer aforesaid, such officer shall appoint the arbitrator or arbitrators.

Nomination and appointment of arbitrators.

12. Where an equal number of arbitrators shall be appointed on each side, they shall collectively appoint another arbitrator to act with them; or, in the event of their not agreeing or failing to appoint such further arbitrator, he shall be appointed by the settlement or other officer aforesaid; and in all matters the majority shall rule the decision.

Majority of arbitrators to rule decision.

13. The settlement or other officer aforesaid shall, by an order under his signature, refer to the arbitrator or arbitrators the matters in dispute which he or they may be required to determine, and shall fix such time as he may think reasonable for the delivery of the award, the time so fixed being specified in the order.

Order of reference.

14. When a reference is made to arbitration by an order of the settlement or other officer, such officer shall furnish the arbitrators, or, so far as may be in his power, procure for them, any information which his records or those of any public department may afford connected with the subject of enquiry.

Arbitrators to be furnished with information.

He shall, on the application of the arbitrators, summon any witnesses whom the arbitrators may call for, and whom the parties may not be able to produce before them with-

Summoning witnesses.

Act XXVIII. of 1860.

out such process, and require the person so summoned to bring and produce before them all such books, papers, deeds, writings, maps, and plans as they shall require.

Persons so summoned shall be subject to all the provisions of the laws in force regarding persons summoned as witnesses before the Collector when acting judicially.

Extension of time for making award.

15. When the arbitrator or arbitrators shall not have been able to complete the award within the period specified in the order, from the want of the necessary evidence or information, or other good and sufficient cause, the settlement or other officer aforesaid may enlarge the period for the delivery of the award, if he shall think proper:

Provided that an award shall not be liable to be set aside only by reason of its not having been completed within the period allowed by the settlement or such other officer aforesaid, unless the award shall have been made after the issue of an order by the settlement or other officer aforesaid superseding the arbitration and revoking the institution of the enquiry.

Appointment in place of arbitrators dying, or refusing to act.

16. If, in any case of reference to arbitration by an order of the settlement or other officer, the arbitrator or arbitrators shall die, or refuse or become incapable to act, it shall be lawful for the settlement or other officer to appoint a new arbitrator or arbitrators in the place of the person or persons so dying, or refusing, or becoming incapable to act.

Award how submitted to settlement-officer.

17. When an award in any matter referred to arbitration shall be made, it shall be submitted to the settlement or other officer aforesaid under the signature of the person or persons by whom it may be made, together with all the proceedings, depositions, and other records, or authenticated copies thereof, relating to the matter.

Power to modify or correct award.

18. The settlement or other officer may, on the application of either party, modify or correct an award where it appears that a part of the award is upon matters not referred to the arbitrators, provided such part can be separated from the other part, and does not affect the decision on the matter referred; or where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision.

Power to remit award or matter referred.

19. In any of the following cases, the settlement or other officer aforesaid shall have power to remit the award or any of the matters referred to arbitration, to the re-consideration of the same arbitrator or arbitrators upon such terms as he may think proper (that is to say)—

If the award has left undetermined some of the matters referred to arbitration, or if it determine matters not referred to arbitration;

If the award is so indefinite as to be incapable of execution;

If an objection to the legality of the award is apparent upon the face of the award.

Setting aside award.

20. No award shall be liable to be set aside except on the ground of corruption or misconduct of the arbitrators. Any application to set aside an award shall be made within ten days after the same has been submitted to the settlement or other officer aforesaid.

21. If the settlement or other officer aforesaid shall not see cause to remit the award or any of the matters referred to arbitration for re-consideration in the manner aforesaid, and if no application shall have been made to set aside the award, or if the settlement or other officer as aforesaid shall have refused such application, the settlement or other officer aforesaid shall proceed to pass a decision according to the award, and after duly furnishing the parties with a copy thereof, he shall proceed to mark out the boundary in accordance therewith, subject to the provisions contained in this Act.

Boundary when to be marked out according to award.

In every case the decision given according to the award shall be final.

22. Where the claims and disputes relate to the occupancy of raiyats of zamindári and proprietary lands, the consent in writing of the settlement or other officer aforesaid on behalf of Government, and of the zamindárs or proprietors interested, shall be necessary for referring the disposal of such claims and disputes to arbitration, and the question of the disputed extent of such zamindári estate shall be determined as between the zamindár or proprietor on one part and the Government on the other, the Government being represented by the Collector, settlement, or other officer aforesaid.

Reference to arbitration of disputes as to occupancy by raiyats of zamindari lands, &c.

23. The settlement or other officer aforesaid shall not be considered incompetent by virtue of his office to undertake the duty of an arbitrator in cases in which the conflicting parties may be desirous to nominate him as such.

Settlement officer may act as arbitrator.

24. A certified copy of every decision passed in accordance with the award of arbitrators under this Act by such officer aforesaid shall be forwarded by him to the Civil Court, and be filed on its records.

Filing copy of decision.

25. Where the conflicting parties may not signify their agreement to refer the dispute to the final decision of arbitrators, or where any of the parties interested or concerned shall, after due notice, fail to attend for the investigation of the same, the settlement or other officer aforesaid shall proceed to investigate the claims, and, in the case of any party failing to attend as aforesaid, shall make an *ex-parte* investigation, and, after examination of the witnesses and documents, shall record his decision, and the grounds for arriving at it, and, after duly informing the parties of the same, he shall proceed to mark out the requisite boundaries in accordance with the decision, which, subject to the revision of the authority to whom the said officer is immediately subordinate, shall be considered as the determination of all claims and disputes until set aside by a formal decree of a Civil Court.

Procedure when parties do not agree to refer to arbitration, &c.

An appeal shall lie to the Civil Courts from this decision by regular suit, provided it be preferred within six* calendar months from the passing of the same:

Appeal.

Provided also that it shall be lawful for the Governor in Council, on just and reasonable cause for the same being shown, to extend the period for such appeal within such further period "not exceeding one year from the date of the order of the settle-

Power to extend time for appeal.

* The word "six" has been substituted for the word "two" by Mad. Act II. of 1884, s. 9.

Act XXVIII. of 1860.

ment or other officer or of the reversing authority,"* as may seem proper, and an order or endorsement under the signature of one of the Secretaries to Government shall be sufficient authority for the Civil Court to entertain such appeal beyond the limit above specified.

Proceedings of officers imposing charges or fines.

26. The proceedings of officers imposing charges or fines, other than magisterial, under sections four, six, and seven, nine of this Act, shall be recorded in writing, and shall be subject to revision by the authorities to whom such officers shall be immediately subordinate.

Appeal.

An appeal shall also lie to the Board of Revenue or to the Director of Revenue Settlement, according to the authority to which the officer imposing the charge or fine may be subordinate.

Appropriation of fines.

27. All fines levied under this Act shall be carried to the credit of Government, except when otherwise provided.

Officers empowered to enter and examine private lands.

28. It shall be lawful for all officers of survey and assessment, revenue officers, or other persons appointed by the Government for the purpose of investigating, settling, or marking boundaries of fields, holdings, villages, and estates, or measuring and assessing the same, and for all persons acting in aid and under orders of such officers, whenever it may be necessary in the performance of their duty, to enter, examine, or measure, without let or hindrance, all lands whatever, whether such lands be the property of Government or of private Companies or individuals; and such officers aforesaid, as well as workmen or other persons acting in aid of and under their orders, are hereby indemnified for what they or any of them shall do under the provisions of this Act.

Punishment for obstructing officers, &c.

29. If any person shall obstruct, molest, or in any way interfere with any public servant conducting the demarcation, measurement, or assessment of lands, or performing other duties provided for in this Act, such person shall be liable, on conviction before a Magistrate or person exercising magisterial powers, to a fine not exceeding fifty rupees, or, in default, imprisonment not exceeding two months for the first offence, and for a repeated offence, to fine not exceeding one hundred and fifty rupees, or imprisonment not exceeding six months:

Extent of power to punish.

Provided, however, that a magisterial officer shall have power to punish under this clause, only to the extent to which he is empowered to punish in cases of ordinary misdemeanour, under his general powers.

Investing subordinate officers with powers.

30. It shall be lawful for the Governor in Council to invest any of the subordinates of the ordinary revenue establishments or of the Settlement or Survey Departments with any portion of the powers conferred under this Act.

Powers of Deputy Director of Revenue Settlement.

31. Any Deputy Director of Revenue Settlement, being a Sub-Collector and Joint Magistrate, shall be competent to exercise, within the district within which he shall be employed, any of the powers ordinarily exercised by a Sub-Collector and Joint Magis-

* The words quoted have been inserted by Mad. Act II. of 1884, s. 9.

trate within his charge: provided, however, that such Deputy Director shall only have cognizance of cases and offences connected with the duties of the Survey or the Settlement Department. Act XXXIV. of 1860.

Power of control and revision in cases under Reg. IX., 1822.

In cases coming under Regulation IX., 1822, of the Madras Code, tried before a Deputy Director under this section, the power of control and revision provided by clause 3, section 3, Regulation VII., 1828, of the same Code, shall be exercised by the Director of Revenue Settlement.

Regulations IX., 1822, and VII., 1828, applied.

32. All servants of the Survey and Settlement Departments shall be subject to the provisions of the said Regulations IX., 1822, and VII., 1828, of the Madras Code, and those Regulations shall apply to the Survey and Settlement Departments in the same way as they apply to the ordinary Revenue Department.

33. [*Repealed by Act XIV. of 1870.*]

ACT XXXIV. OF 1860.*

RECEIVED THE G.-G.'S ASSENT ON THE 2ND AUGUST 1860.

An Act to indemnify Officers of Government and other persons in respect of fines and contributions levied, and acts done by them during the late disturbances.

Preamble.

WHEREAS fines and penalties have been imposed and levied by officers of Government in respect of acts committed during the late disturbances; and whereas assessments and contributions have been made and collected for the reconstruction or repairs of public buildings destroyed or injured during the same period and for other purposes; and whereas it is expedient to indemnify all officers of Government and other persons acting under the authority of officers of Government from any penalties or proceedings to which they may have rendered themselves liable since the tenth day of May 1857 in respect of the said fines, penalties, assessments, and contributions, and of any other acts which may have been done by them, and which have been or shall be ratified by the Executive Government, and to confirm and make valid the levy of the said fines, penalties, assessments, and contributions, and the said acts; It is enacted as follows :—

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* Act XXXIV. of 1860 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	See *Gazette of India*	Oct. 22, 1881, Pt. I., p. 504.
The Jhánsí Division . . .	Ditto	Aug. 31, 1878, Pt. I., p. 546.
The scheduled portion of the Mirzápur District	Ditto	May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	May 31, 1879, Pt. I., p. 382.

It has been extended, under the same Act, to the North-Western Provinces Tarái. —See *Gazette of India*, Sep. 23, 1876, Pt. I., p. 505.

Act XXXIV. of 1860.

Indemnity in respect of fines, penalties, &c., imposed since 10th May 1857.

1. All fines, penalties, assessments, and contributions imposed since the tenth day of May 1857 in respect of the destruction or injury of Government or other property, or on any other account connected with the late disturbances, by any officer of Government, or by any person acting under the authority of an officer of Government, shall be deemed to have been duly imposed and levied if the same shall have been levied in pursuance of an order of Government or shall have been or shall be ratified by the Executive Government; and all officers of Government and all persons acting under their authority are hereby indemnified and discharged from liability in respect of any such fines, penalties, assessments, and contributions, and levying the same, and no suit or proceeding shall be commenced or prosecuted in respect thereof.

Proviso.

Provided that nothing in this Act shall authorize the levy of any fine, penalty, assessment, or contribution not already levied.

Indemnity for certain acts done since 10th May 1857.

2. All acts done since the tenth day of May 1857 in connection with the late disturbances by officers of Government, or by persons acting under their authority or otherwise, in pursuance of an order of Government, or which shall have been or shall be ratified by the Executive Government, are hereby confirmed and made valid; and all such officers of Government and persons as aforesaid are hereby indemnified and discharged from liability in respect of such acts.

ACT XLV. OF 1860.*

Act XLV. of 1860.

THE INDIAN PENAL CODE.

RECEIVED THE G.-G.'S ASSENT ON THE 6TH OCTOBER 1860.

CHAPTER I.

INTRODUCTION.

Preamble. WHEREAS it is expedient to provide a General Penal Code for British India; it is enacted as follows:—

Title and extent of operation of the Code. **1.** This Act shall be called the Indian Penal Code, and shall take effect† throughout the whole of the territories which are or may become vested in Her Majesty by the Statute 21 and 22 Victoria, chapter 106, entitled "An Act for the better government of India."†

Punishment of offences committed within the said territories. **2.** Every person shall be liable to punishment under this Code, and not otherwise, for every act or omission contrary to the provisions thereof, of which he shall be guilty within the said territories.†

Punishment of offences committed beyond, but which by law may be tried within, the territories. **3.** Any person liable, by any law passed by the Governor-General of India in Council to be tried for an offence committed beyond the limits of the said territories, shall be dealt with according to the provisions of this Code for any act committed beyond the said territories in the same manner as if such act had been committed within the said territories.

Punishment of offences committed by a servant of the Queen within a foreign allied State. **4.** Every servant of the Queen shall be subject to punishment under this Code for every act or omission contrary to the provisions thereof, of which he, whilst in such service, shall be guilty‡ within the dominions of any Prince or State in alliance with the Queen, by virtue of any treaty or engagement heretofore entered into with the East India Company, or which may have been, or may hereafter be, made in the name of the Queen by any Government of India.

Certain laws not to be affected by this Act. **5.** Nothing in this Act is intended to repeal, vary, suspend, or affect any of the provisions of the Stat. 3 and 4 Will. IV., chap. 85, or of any Act of Parliament passed after that Statute in anywise affecting the East India Company, or the said territories, or the inhabitants thereof; or any of the provisions of any Act for punishing mutiny and desertion of officers and soldiers in the service of Her Majesty, or of any special or local law.

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* As amended by Act VI. of 1861, Acts XIV. and XXVII. of 1870, Act XIX. of 1872, Act X. of 1873, Act XII. of 1881, Acts VIII. and X. of 1882, Act X. of 1886, Act XIV. of 1887, Acts I., IV., and XIII. of 1889, and Act XII. of 1891.

† Here certain words relating to the date of the commencement of the operation of the Code have been repealed, and therefore omitted.—See Act XII. of 1891, Sch. I.

‡ Here the words, "on or after the said first day of May 1861," have been omitted having been repealed by Act XII. of 1891.

Act XLV. of 1860.

CHAPTER II.

GENERAL EXPLANATIONS.

Definitions in the Code to be understood subject to exceptions.

6. Throughout this Code, every definition of an offence, every penal provision, and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the chapter entitled "General Exceptions," though those exceptions are not repeated in such definition, penal provision, or illustration.

Illustrations.

(*a.*) The sections in this Code, which contain definitions of offences do not express that a child under seven years of age cannot commit such offences; but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.

(*b.*) A, a police-officer, without warrant, apprehends Z, who has committed murder. Here A is not guilty of the offence of wrongful confinement; for he was bound by law to apprehend Z, and therefore the case falls within the general exception which provides that "nothing is an offence which is done by a person who is bound by law to do it."

Sense of expression once explained.

7. Every expression which is explained in any part of this Code is used in every part of this Code in conformity with the explanation.

Gender.

8. The pronoun "he" and its derivatives are used of any person, whether male or female.

Number.

9. Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number

"Man:" "Woman."

10. The word "man" denotes a male human being of any age: the word "woman" denotes a female human being of any age.

"Person."

11. The word "person" includes any company or association, or body of persons, whether incorporated or not.

"Public."

12. The word "public" includes any class of the public or any community.

"Queen."

13. The word "Queen" denotes the Sovereign for the time being of the United Kingdom of Great Britain and Ireland.

"Servants of the Queen."

14. The words "servants of the Queen" denote all officers or servants continued, appointed, or employed in India by or under the authority of the said Statute 21 and 22 Victoria, chapter 106, entitled "An Act for the better government of India," or by or under the authority of the Government of India or any Government.

"British India."

15. The words "British India" denote the territories which are or may become vested in Her Majesty by the said Statute 21 and 22 Victoria, chapter 106, entitled "An Act for the better government of India."*

* Here the words, "except the Settlement of the Prince of Wales's Island, Singapore, and Malacca," have been omitted, having been repealed by Act XII. of 1891.

"Government of India."

16. The words "Government of India" denote the Governor-General of India in Council, or during the absence of the Governor-General of India from his Council, the President in Council, or the Governor-General of India alone as regards the powers which may be lawfully exercised by them or him respectively.

"Government."

17. The word "Government" denotes the person or persons authorized by law to administer executive government in any part of British India.

"Presidency."

18. The word "Presidency" denotes the territories subject to the Government of a Presidency.

"Judge."

19. The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

Illustrations.

(*a.*) A Collector exercising jurisdiction in a suit under "The North-Western Provinces Rent Act, 1881,"* is a Judge.

(*b.*) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge.

(*c.*) A member of a panchâyat which has power, under Reg. VII., 1816, of the Madras Code, to try and determine suits, is a Judge.

(*d.*) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court is not a Judge.

"Court of Justice."

20. The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

Illustration.

A panchâyat acting under Reg. VII., 1816, of the Madras Code, having power to try and determine suits, is a Court of Justice.

"Public servant."

21. The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely:—

First.—Every covenanted servant of the Queen;

Second.—Every commissioned officer in the military or naval forces of the Queen while serving under the Government of India or any Government;

Third.—Every Judge;

Fourth.—Every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any such duties;

* The words quoted have been substituted for the words, "Act X. of 1859," by the North-Western Provinces Rent Act (XII. of 1881), s. 2.

Act XLV. of 1860.

Fifth.—Every juryman, assessor, or member of a panchâyat assisting a Court of Justice or public servant;

Sixth.—Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice or by any other competent public authority;

Seventh.—Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth.—Every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety, or convenience;

Ninth.—Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property on behalf of Government, or to make any survey, assessment, or contract on behalf of Government, or to execute any revenue-process, or to investigate or to report on any matter affecting the pecuniary interests of Government, or to make, authenticate, or keep any document relating to the pecuniary interests of Government, or prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government, or remunerated by fees or commission for the performance of any public duty;

Tenth.—Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property, to make any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town, or district, or to make, authenticate, or keep any document for the ascertaining of the rights of the people of any village, town, or district.

Illustration.

A municipal commissioner is a public servant.

Explanation 1.—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2.—Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

"Moveable property."

22. The words "moveable property" are intended to include corporeal property of every description, except land and things attached to the earth, or permanently fastened to any thing which is attached to the earth.

"Wrongful gain."

23. "Wrongful gain" is gain by unlawful means of property to which the person gaining it is not legally entitled.

"Wrongful loss."

"Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled.

Gaining wrongfully; losing wrongfully.

A person is said to gain wrongfully when such person retains wrongfully as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

"Dishonestly."

24. Whoever does any thing with the intention of causing wrongful gain to one person, or wrongful loss to another person, is said to do that thing "dishonestly."

"Fraudulently." **25.** A person is said to do a thing fraudulently if he does that thing with intent to defraud, but not otherwise.

"Reason to believe." **26.** A person is said to have "reason to believe" a thing if he has sufficient cause to believe that thing, but not otherwise.

"Property in possession of wife, clerk, or servant." **27.** When property is in the possession of a person's wife, clerk, or servant, on account of that person, it is in that person's possession within the meaning of this Code.

Explanation.—A person employed temporarily, or on a particular occasion, in the capacity of a clerk or servant, is a clerk or servant within the meaning of this section.

"Counterfeit." **28.** A person is said to "counterfeit," who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

Explanation 1.—It is not essential to counterfeiting that the imitation should be exact.*

Explanation 2.—When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended, by means of that resemblance, to practise deception, or knew it to be likely that deception would thereby be practised.*

"Document." **29.** The word "document" denotes any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

Explanation 1.—It is immaterial by what means or upon what substance, the letters, figures, or marks, are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.

Illustrations.

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A cheque upon a banker is a document.

A power-of-attorney is a document.

A map or plan which is intended to be used, or which may be used, as evidence, is a document.

A writing containing directions or instructions is a document.

Explanation 2.—Whatever is expressed by means of letters, figures, or marks, as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures, or marks within the meaning of this section, although the same may not be actually expressed.

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* These two explanations have been substituted for the original by the Metal Tokens Act (I. of 1889), s. 9.

Act XLV. of 1860.

Illustration.

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement as explained by mercantile usage is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words "pay to the holder," or words to that effect, had been written over the signature.

"Valuable security."

30. The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished, or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

Illustration.

A writes his name on the back of a bill of exchange. As the effect of this endorsement is to transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a "valuable security."

"A will."

31. The words "a will" denote any testamentary document.

Words referring to acts include illegal omissions.

32. In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

"Act." "Omission."

33. The word "act" denotes as well a series of acts as a single act; the word "omission" denotes as well a series of omissions as a single omission.

Act done by several persons in furtherance of common intention.

34. When a criminal act is done by several persons "in furtherance of the common intention of all,"* each of such persons is liable for that act in the same manner as if it were done by him alone.

When such act is criminal by reason of its being done with criminal knowledge or intention.

35. Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

Effect caused partly by act and partly by omission.

36. Whenever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect, partly by an act, and partly by an omission, is the same offence.

Illustration.

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed murder.

Co-operation by doing one of several acts constituting an offence.

37. When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

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* The words quoted have been added by Act XXVII. of 1870, s. 1.

Illustrations.

(*a.*) A and B agree to murder Z by severally, and at different times, giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects of the several doses of poison so administered to him. Here A and B intentionally co-operate in the commission of murder, and as each of them does an act by which the death is caused, they are both guilty of the offence, though their acts are separate.

(*b.*) A and B are joint jailors, and, as such, have the charge of Z, a prisoner, alternately for six hours at a time. A and B, intending to cause Z's death, knowingly co-operate in causing that effect by illegally omitting, each during the time of his attendance, to furnish Z with food supplied to them for that purpose. Z dies of hunger. Both A and B are guilty of the murder of Z.

(*c.*) A, a jailor, has the charge of Z, a prisoner. A, intending to cause Z's death, illegally omits to supply Z with food, in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his office, and B succeeds him. B, without collusion or co-operation with A, illegally omits to supply Z with food, knowing that he is likely thereby to cause Z's death. Z dies of hunger. B is guilty of murder; but as A did not co-operate with B, A is guilty only of an attempt to commit murder.

Persons concerned in criminal act may be guilty of different offences.

38. Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

Illustration.

A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder. B, having ill-will towards Z, and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here, though A and B are both engaged in causing Z's death, B is guilty of murder, and A is guilty only of culpable homicide.

"Voluntarily."

39. A person is said to cause an effect "voluntarily," when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

Illustration.

A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating a robbery, and thus causes the death of a person. Here A may not have intended to cause death, and may even be sorry that death has been caused by his act; yet if he knew that he was likely to cause death, he has caused death voluntarily.

"Offence."

40. Except in the chapter and sections mentioned in clauses two and three of this section, the word "offence" denotes a thing made punishable by this Code.

In Chapter IV. and in the following sections, namely, sections "64, 65, 66, 67,* 71,"† 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389, and 445, the word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined:

And in sections 141, 176, 177, 201, 202, 212, 216, and 441, the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months, or upwards, whether with or without fine.‡

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* The figures "67" have been inserted by Act X. of 1886, s. 21.

† The figures quoted have been added by Act VIII. of 1882, s. 1.

‡ This section (excepting the amendments made by Acts VIII. of 1882 and X. of 1886) has been substituted by Act XXVII. of 1870, s. 2, for the one originally enacted.

Act XLV. of 1860.

"Special law."

41. A "special law" is a law applicable to a particular subject.

"Local law."

42. A "local law" is a law applicable only to a particular part of British India.

"Illegal." "Legally bound to do."

43. The word "illegal" is applicable to everything which is an offence, or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be "legally bound to do" whatever it is illegal in him to omit.

"Injury."

44. The word "injury" denotes any harm whatever illegally caused to any person in body, mind, reputation, or property.

"Life."

45. The word "life" denotes the life of a human being, unless the contrary appears from the context.

"Death."

46. The word "death" denotes the death of a human being, unless the contrary appears from the context.

"Animal."

47. The word "animal" denotes any living creatures other than a human being.

"Vessel."

48. The word "vessel" denotes any thing made for the conveyance by water of human beings or property.

"Year," "Month."

49. Wherever the word "year" or the word "month" is used, it is to be understood that the year or the month is to be reckoned according to the British calendar.

"Section."

50. The word "section" denotes one of those portions of a chapter of this Code which are distinguished by prefixed numeral figures.

"Oath."

51. The word "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorized by law to be made before a public servant, or to be used for the purpose of proof, whether in a Court of Justice or not.

"Good faith."

52. Nothing is said to be done or believed in good faith which is done or believed without due care and attention.

CHAPTER III.

OF PUNISHMENTS.

Punishments.

53. The punishments to which offenders are liable under the provisions of this Code are—

First.—Death;

Secondly.—Transportation;

Thirdly.—Penal servitude;

Fourthly.—Imprisonment, which is of two descriptions, namely :—

(1) Rigorous, that is, with hard labour ;

(2) Simple ;

Fifthly.—Forfeiture of property ;

Sixthly.—Fine.

Commutation of sentence of death.

54. In every case in which sentence of death shall have been passed the Government of India or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

Commutation of sentence of transportation for life.

55. In every case in which sentence of transportation for life shall have been passed, the Government of India or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

Sentence of Europeans and Americans to penal servitude.

56. Whenever any person, being a European or American, is convicted of an offence punishable under this Code with transportation, the Court shall sentence the offender to penal servitude, instead of transportation, according to the provision of Act XXIV. of 1855 :

Proviso as to sentence for term exceeding ten years, but not for life.

Provided that, where a European or American offender would, but for such Act, be liable to be sentenced or ordered to be transported for a term exceeding ten years, but not for life, he shall be liable to be sentenced or ordered to be kept in penal servitude for such term exceeding six years as to the Court seems fit, but not for life.*

Fractions of terms of punishment.

57. In calculating fractions of terms of punishment, transportation for life shall be reckoned as equivalent to transportation for twenty years.

Offenders sentenced to transportation how dealt with until transported.

58. In every case in which a sentence of transportation is passed, the offender, until he is transported, shall be dealt with in the same manner as if sentenced to rigorous imprisonment, and shall be held to have been undergoing his sentence of transportation during the term of his imprisonment.

In what cases transportation may be awarded instead of imprisonment.

59. In every case in which an offender is punishable with imprisonment for a term of seven years or upwards, it shall be competent to the Court which sentences such offender, instead of awarding sentence of imprisonment, to sentence the offender to transportation for a term not less than seven years, and not exceeding the term for which by this Code such offender is liable to imprisonment.

Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple.

60. In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall

* This proviso has been added by Act XXVII. of 1870, s. 3.

Act XLV. of 1860.

be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

Sentence of forfeiture of property.

61. In every case in which a person is convicted of an offence for which he is liable to forfeiture of all his property, the offender shall be incapable of acquiring any property, except for the benefit of Government, until he shall have undergone the punishment awarded or the punishment to which it shall have been commuted, or until he shall have been pardoned.

Illustration.

A, being convicted of waging war against the Government of India, is liable to forfeiture of all his property. After the sentence, and whilst the same is in force, A's father dies, leaving an estate which, but for the forfeiture, would become the property of A. The estate becomes the property of Government.

Forfeiture of property in respect of offenders punishable with death, transportation, or imprisonment.

62. Whenever any person is convicted of an offence punishable with death, the Court may adjudge that all his property, moveable and immoveable, shall be forfeited to Government; and whenever any person shall be convicted of any offence for which he shall be transported, or sentenced to imprisonment for a term of seven years or upwards, the Court may adjudge that the rents and profits of all his moveable and immoveable estate during the period of his transportation or imprisonment shall be forfeited to Government, subject to such provision for his family and dependents as the Government may think fit to allow during such period.

Amount of fine.

63. Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

Sentence of imprisonment in default of payment of fine.

64. "In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment;

"and in every case of an offence punishable *with imprisonment or fine, or** with fine only, in which the offender is sentenced to a fine,"† it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced, or to which he may be liable under a commutation of a sentence.

Limit to imprisonment for non-payment of fine, when imprisonment and fine awardable.

65. The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

Description of imprisonment for such default.

66. The imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.

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* The words italicized have been inserted by Act X. of 1886, s. 21.

† The clauses quoted have been substituted by Act VIII. of 1882, s. 2, for the words, "In every case in which an offender is sentenced to a fine."

67. If the offence be punishable with fine only, "the imprisonment which the Court imposes in default of payment of the fine shall be simple, and"* the term for which the Court directs the offender to be imprisoned, in default of payment of fine, shall not exceed the following scale, that is to say, for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case.

Imprisonment for non-payment of fine when offence punishable with fine only.

68. The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

Imprisonment to terminate on payment of fine.

69. If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

Termination of such imprisonment upon payment of proportional part of fine.

Illustrations.

A is sentenced to a fine of one hundred rupees, and to four months' imprisonment in default of payment. Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged.

70. The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period; and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

Fine leviable within 6 years, or during imprisonment.

Death not to discharge property from liability.

71. Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

Limit of punishment of offence made up of several offences.

"Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

"where several acts, of which one or more than one would, by itself or themselves, constitute an offence, constitute, when combined, a different offence,

"the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences."†

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* The words quoted have been inserted by Act VIII. of 1882, s. 3.

† The clause quoted has been added by Act VIII. of 1882, s. 4.

Illustrations.

(*a.*) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(*b.*) But if, while A is beating Z, Y interferes, and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and another for the blow given to Y.

Punishment of person guilty of one of several offences, the judgment stating that it is doubtful of which.

72. In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided if the same punishment is not provided for all.

Solitary confinement.

73. Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say :—

A time not exceeding one month if the term of imprisonment shall not exceed six months ;

A time not exceeding two months if the term of imprisonment shall exceed six months and "shall not exceed a"* year ;

A time not exceeding three months if the term of imprisonment shall exceed one year.

Limit of solitary confinement.

74. In executing a sentence of solitary confinement, such confinement shall, in no case, exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods ; and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month, of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

Punishment of persons convicted, after a previous conviction, of an offence punishable with three years' imprisonment.

75. Whoever, having been convicted of an offence punishable under Chapter XII. or Chapter XVII. of this Code with imprisonment of either description for a term of three years or upwards, shall be guilty of any offence punishable under either of those chapters with imprisonment of either description for a term of three years or upwards, shall be subject for every such subsequent offence to transportation for life, "or to imprisonment of either description for a term which may extend to ten years."†

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* The words quoted have been substituted by Act VIII. of 1882, s. 5, for the words "be less than a."

† The words quoted have been substituted by Act X. of 1886, s. 22, for the words "or to double the amount of punishment to which he would otherwise have been liable for the same ; provided that he shall not in any case be liable to imprisonment for a term exceeding ten years."

CHAPTER IV.*

GENERAL EXCEPTIONS.

76. Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.

Act done by a person bound, or by mistake of fact believing himself bound, by law.

Illustrations.

(*a*.) A, a soldier, fires on a mob by the order of his superior officer in conformity with the commands of the law. A has committed no offence.

(*b*.) A, an officer of a Court of Justice, being ordered by the Court to arrest Y, and, after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

77. Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

Act of Judge when acting judicially.

78. Nothing which is done in pursuance of, or which is warranted by, the judgment or order of a Court of Justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

Act done pursuant to the judgment or order of Court.

79. Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be justified by law, in doing it.

Act done by a person justified, or by mistake of fact believing himself justified, by law.

Illustration.

A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the act, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

80. Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge, in the doing of a lawful act in a lawful manner, by lawful means, and with proper care and caution.

Accident in doing a lawful act.

Illustration.

A is at work with a hatchet; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excusable and not an offence.

81. Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

Act likely to cause harm, but done without criminal intent, and to prevent other harm.

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* The following chapters of the Penal Code, namely, IV. (General Exceptions), V. (Abetment), and XXII. (Attempts to Commit Offences), shall apply to offences punishable under the said ss. 121A, 294A, and 304A; and the said Chapters IV. and V. shall apply to offences punishable under the said ss. 124A and 225A.—Act XXVII. of 1870, s. 13.

Act XLV. of 1860.

Explanation.—It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

Illustrations.

(*a.*) A, the captain of a steam-vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat, B, with 20 or 30 passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat, C, with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C, and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down the boat C.

(*b.*) A in a great fire pulls down houses in order to prevent the conflagration from spreading. He does this with the intention, in good faith, of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

Act of a child under seven years of age.

82. Nothing is an offence which is done by a child under seven years of age.

Act of a child above 7 and under 12, of immature understanding.

83. Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequence of his conduct on that occasion.

Act of a person of unsound mind.

84. Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

Act of a person incapable of judgment by reason of intoxication caused against his will.

85. Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law; provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

Offence requiring a particular intent or knowledge committed by one who is intoxicated.

86. In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing, which intoxicated him, was administered to him without his knowledge, or against his will.

Act not intended, and not known to be likely to cause death or grievous hurt, done by consent.

87. Nothing which is not intended to cause death or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person above eighteen years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

Illustration.

A and Z agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which, in the course of such fencing, may be caused without foul play; and if A, while playing fairly, hurts Z, A commits no offence.

Act not intended to cause death, done by consent in good faith for person's benefit.

88. Nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

Illustration.

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death, and intending in good faith, Z's benefit, performs that operation on Z with Z's consent. A has committed no offence.

Act done in good faith for benefit of child or insane person, by or by consent of guardian.

89. Nothing, which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person:

Provisos.

Provided—

First.—That this exception shall not extend to the intentional causing of death, or to the attempting to cause death;

Secondly.—That this exception shall not extend to the doing of any thing which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly.—That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;

Fourthly.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustration.

A, in good faith, for his child's benefit, without his child's consent, has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, inasmuch as his object was the cure of the child.

Consent known to be given under fear or misconception.

90. A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

Consent of a child or person of unsound mind.

If the consent is given by a person who, from unsoundness of mind or intoxication, is unable to understand the nature and consequence of that to which he gives his consent;

Act XLV. of 1860.

or, unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

Exclusion of acts which are offences independently of harm caused.

91. The exceptions in sections 87, 88, and 89, do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Illustration.

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause, or be intended to cause, to the woman. Therefore it is not an offence "by reason of such harm;" and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

Act done in good faith for the benefit of a person without consent.

92. Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit: Provided—

Provisos.

First.—That this exception shall not extend to the intentional causing of death, or the attempting to cause death;

Secondly.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly.—That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt;

Fourthly.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustrations.

(*a.*) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(*b.*) Z is carried off by a tiger. A fires at the tiger, knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z's benefit. A's ball gives Z a mortal wound. A has committed no offence.

(*c.*) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is not time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.

(*d.*) A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the house-top, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, A has committed no offence.

Explanation.—Mere pecuniary benefit is not benefit within the meaning of sections 88, 89, and 92.

Act XLV. of 1860.

Communication made in good faith.

93. No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person.

Illustration.

A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

Act to which a person is compelled by threats.

94. Except murder and offences against the State, punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence; provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation 1.—A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do any thing that is an offence by law.

Explanation 2.—A person seized by a gang of dacoits, and forced, by threat of instant death, to do a thing which is an offence by law—for example, a smith compelled to take his tools, and to force the door of a house for the dacoits to enter and plunder it—is entitled to the benefit of this exception.

Act causing slight harm.

95. Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

Of the Right of Private Defence.

Things done in private defence.

96. Nothing is an offence which is done in the exercise of the right of private defence.

Right of private defence of the body and of property.

97. Every person has a right, subject to the restrictions contained in section 99, to defend—

First.—His own body, and the body of any other person, against any offence affecting the human body;

Secondly.—The property, whether moveable or immoveable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief, or criminal trespass, or which is an attempt to commit theft, robbery, mischief, or criminal trespass.

Right of private defence against the act of a person of unsound mind, &c.

98. When an act, which would otherwise be a certain offence, is not that offence by reason of the youth, the want of maturity of understanding, the unsoundness of mind, or the intoxication, of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

Illustrations.

(*a*.) Z, under the influence of madness, attempts to kill A. Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(*b*.) A enters by night a house which he is legally entitled to enter. Z, in good faith, taking A for a house-breaker, attacks A. Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception.

99. *First.*—There is no right of private defence against an act which does not reasonably cause the apprehension of death or grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

Acts against which there is no right of private defence.

Second.—There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

Third.—There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

Fourth.—The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Extent to which the right may be exercised.

Explanation 1.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows, or has reason to believe, that the person doing the act is such public servant.

Explanation 2.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts or, if he has authority in writing, unless he produces such authority, if demanded.

100. The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely :—

When the right of private defence of the body extends to causing death.

First.—Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly.—Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly.—An assault with the intention of committing rape;

Fourthly.—An assault with the intention of gratifying unnatural lust;

Fifthly.—An assault with the intention of kidnapping or abducting;

Sixthly.—An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

101. If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99, to the voluntary causing to the assailant of any harm other than death.

When such right extends to causing any harm other than death.

102. The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed, and it continues as long as such apprehension of danger to the body continues.

Commencement and continuance of the right of private defence of the body.

103. The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death, or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely :—

When the right of private defence of property extends to causing death.

First.—Robbery ;

Secondly.—House-breaking by night ;

Thirdly.—Mischief by fire committed on any building, tent, or vessel, which building, tent, or vessel, is used as a human dwelling, or as a place for the custody of property ;

Fourthly.—Theft, mischief, or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

104. If the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, the right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

When such right extends to causing any harm other than death.

105. *First.*—The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

Commencement and continuance of the right of private defence of property.

Second.—The right of private defence of property against theft continues till the offender has effected his retreat with the property, or the assistance of the public authorities is obtained, or the property has been recovered.

Third.—The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint, or as long as the fear of instant death or of instant hurt or of instant personal restraint continues.

Fourth.—The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

Fifth.—The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

Act XLV. of 1860.

106. If, in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

Right of private defence against deadly assault when there is risk of harm to innocent person.

Illustration.

A is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if, by so firing, he harms any of the children.

CHAPTER V.*

OF ABETMENT.

Abetment of a thing.

107. A person abets the doing of a thing who—

First.—Instigates any person to do that thing; or,

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or,

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration.

A, a public officer, is authorized by a warrant from a Court of justice to apprehend Z. B, knowing that fact, and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.—Whoever, either prior to, or at the time of, the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Abettor.

108. A person abets an offence who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence, with the same intention or knowledge as that of the abettor.

Explanation 1.—The abetment of the illegal omission of an act may amount to an offence, although the abettor may not himself be bound to do that act.

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* The following chapters, namely, IV. (General Exceptions), V. (Abetment), and XXIII. (Attempts to Commit Offences) apply to offences punishable under ss. 121A, 294A, and 304A; and Chaps. IV. and V. apply to offences punishable under ss. 124A and 225A.—Act XXVII. of 1870, s. 13.

Explanation 2.—To constitute the offence of abetment, it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations.

(*a.*) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(*b.*) A instigates B to murder D. B, in pursuance of the instigation, stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3.—It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations.

(*a.*) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(*b.*) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act, and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is, therefore, subject to the punishment of death.

(*c.*) A instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.

(*d.*) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4.—The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration.

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5.—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed.

Illustration.

A concerts with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C, mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not con-

Act XLV. of 1860.

spired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has, therefore, committed the offence defined in this section, and is liable to the punishment for murder.

Punishment of abetment if the act abetted is committed in consequence, and where no express provision is made for its punishment.

109. Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.—An act or offence is said to be committed in consequence of abetment when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Illustrations.

(*a.*) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in section 161.

(*b.*) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

(*c.*) A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison, and delivers it to B, in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence, and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

Punishment of abetment if person abetted does act with different intention from that of abettor.

110. Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed, if the act had been done with the intention or knowledge of the abettor, and with no other.

Liability of abettor when one act abetted and different act done.

Proviso.

111. When an act is abetted, and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it; provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid, or in pursuance of the conspiracy which constituted the abetment.

Illustrations.

(*a.*) A instigates a child to put poison into the food of Z, and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here, if the child was acting under the influence of A's instigation, and the act done was under the circumstances a probable consequence of the abetment, A is liable in the same manner, and to the same extent, as if he had instigated the child to put the poison into the food of Y.

(*b.*) A instigates B to burn Z's house. B sets fire to the house, and at the same time commits theft of property there. A, though guilty of abetting the burning of the house, is not guilty of abetting the theft; for the theft was a distinct act, and not a probable consequence of the burning.

(*c.*) A instigates B and C to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and, being resisted by Z, one of the inmates, murder Z. Here, if the murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

112. If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

Abettor when liable to cumulative punishment for act abetted, and for act done.

Illustration.

A instigates B to resist by force a distress made by a public servant. B, in consequence, resists that distress. In offering the resistance, B voluntarily causes grievous hurt to the officer executing the distress. As B has committed both the offence of resisting the distress and the offence of voluntarily causing grievous hurt, B is liable to punishment for both these offences; and, if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress, A will also be liable to punishment for each of the offences.

113. When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, causes a different effect from that intended by the abettor, the abettor is liable for the effect caused in the same manner, and to the same extent, as if he had abetted the act with the intention of causing that effect; provided he knew that the act abetted was likely to cause that effect.

Liability of abettor for an effect caused by the act abetted different from that intended by the abettor.

Illustration.

A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes grievous hurt to Z. Z dies in consequence. Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder.

114. Whenever any person who, if absent, would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

Abettor present when offence is committed.

115. Whoever abets the commission of an offence punishable with death or transportation for life shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt ot any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Abetment of offence punishable with death or transportation for life, if offence not committed.

If act causing harm be done in consequence.

Illustration.

A instigates B to murder Z. The offence is not committed. If B had murdered Z, he would have been subject to the punishment of death or transportation for life. Therefore A is liable to imprisonment for a term which may extend to seven years, and also to a fine; and, if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

116. Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the long-

Abetment of offence punishable with imprisonment, if offence be not committed in consequence of abetment.

Act XLV. of 1860.

est term provided for that offence, or with such fine as is provided for that offence, or with both; and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence the abettor shall be punished with imprisonment of any description provided for that offence for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

If abettor or person abetted be a public servant whose duty it is to prevent offence.

Illustrations.

(*a.*) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this section.

(*b.*) A instigates B to give false evidence. Here, if B does not give false evidence, A has nevertheless committed the offence defined in this section, and is punishable accordingly.

(*c.*) A, a police-officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

(*d.*) B abets the commission of a robbery by A, a police-officer, whose duty it is to prevent that offence. Here, though the robbery be not committed, B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

117. Whoever abets the commission of an offence by the public generally, or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Abetting the commission of an offence by the public, or by more than ten persons.

Illustration.

A affixes in a public place a placard, instigating a sect, consisting of more than ten members, to meet at a certain time and place for the purpose of attacking the members of an adverse sect while engaged in a procession. A has committed the offence defined in this section.

118. Whoever, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence punishable with death or transportation for life, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall, if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years; or, if the offence be not committed, with imprisonment of either description for a term which may extend to three years; and in either case shall also be liable to fine.

Concealing a design to commit an offence.

Punishable with death or transportation for life—

If offence committed;

If not committed.

Illustration.

A knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in an opposite direction, and thereby misleads the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at B in pursuance of the design. A is punishable under this section.

119. Whoever, being a public servant, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence, the commission of which it is his duty as such public servant to prevent, voluntarily conceals, by any act or illegal omission, the

Public servant concealing design to commit offence which it is his duty to prevent—

existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall, if the offence be committed, be punished with imprisonment of any description provided for the offence for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both;

If offence committed;

or, if the offence be punishable with death or transportation for life, with imprisonment of either description for a term which may extend to ten years;

If offence punishable with death, &c.

or, if the offence be not committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one-fourth part of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

If offence not committed.

Illustration.

A, an officer of police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and, knowing that B designs to commit robbery, omits to give such information, with intent to facilitate the commission of that offence. Here A has, by an illegal omission, concealed the existence of B's design, and is liable to punishment according to the provision of this section.

120. Whoever, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence punishable with imprisonment, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall, if the offence be committed, be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth, and, if the offence be not committed, to one-eighth, of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

Concealing design to commit offence punishable with imprisonment—

If offence committed;

If not committed.

CHAPTER VI.

OF OFFENCES AGAINST THE STATE.

121. Whoever wages war against the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished with death or transportation for life, and shall forfeit all his property.

Waging or attempting to wage war, or abetting waging of war, against Queen.

Illustrations.

(*a.*) A joins an insurrection against the Queen. A has committed the offence defined in this section.

(*b.*) A in India abets an insurrection against the Queen's Government of Ceylon by sending arms to the insurgents. A is guilty of abetting the waging of war against the Queen.

121A. Whoever, within or without British India, conspires to commit any of the offences punishable by section 121, or to deprive the Queen of the sovereignty of British India or of any part thereof, or conspires to overawe, by

Conspiracy to commit offences punishable by section 121.

Act XLV. of 1860. means of criminal force or the show of criminal force, the Government of India or any Local Government, shall be punished with transportation for life or any shorter term, or with imprisonment of either description which may extend to ten years.

Explanation.—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.*

Collecting arms, &c., with the intention of waging war against Queen.

122. Whoever collects men, arms, or ammunition, or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the Queen, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall forfeit all his property.

Concealing with intent to facilitate a design to wage war.

123. Whoever, by any act or by any illegal omission, conceals the existence of a design to wage war against the Queen, intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Assaulting Governor-General, Governor, &c., with intent to compel or restrain the exercise of any lawful power.

124. Whoever, with the intention of inducing or compelling the Governor-General of India, or the Governor of any Presidency, or a Lieutenant-Governor, or a Member of the Council of the Governor-General of India, or of the Council of any Presidency, to exercise or refrain from exercising in any manner any of the lawful powers of such Governor-General, Governor, Lieutenant-Governor, or Member of Council, assaults or wrongfully restrains, or attempts wrongfully to restrain, or overawes, by means of criminal force or the show of criminal force, or attempts so to overawe such Governor-General, Governor, Lieutenant-Governor, or Member of Council, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exciting disaffection.

124A. Whoever, by words, either spoken or intended to be read, or by signs, or by visible representation, or otherwise, excites, or attempts to excite, feelings of disaffection to the Government established by law in British India, shall be punished with transportation for life or for any term, to which fine may be added, or with imprisonment for a term which may extend to three years, to which fine may be added, or with fine.

Explanation.—Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government, and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority, is not disaffection. Therefore, the making of comments on the measures of the Government, with the intention of exciting only this species of disapprobation, is not an offence within this clause.†

Waging war against Asiatic power in alliance with Queen.

125. Whoever wages war against the Government of any Asiatic power in alliance or at peace with the Queen, or attempts to wage such war, or abets the waging of such war,

* New section, inserted by Act XXVII. of 1870, s. 4.

†.New section, inserted by Act XXVII. of 1870, s. 5.

shall be punished with transportation for life, to which fine may be added, or with imprisonment of either description for a term which may extend to seven years, to which fine may be added, or with fine. Act XLV. of 1860.

126. Whoever commits depredation, or makes preparations to commit depredation, on the territories of any power in alliance or at peace with the Queen, shall be punished with imprisonment of either description for a term which may extend to seven years, and also be liable to fine and to forfeiture of any property used, or intended to be used, in committing such depredation, or acquired by such depredation.

Committing depredation on territories of power at peace with Queen.

127. Whoever receives any property, knowing the same to have been taken in the commission of any of the offences mentioned in sections 125 and 126, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of the property so received.

Receiving property taken by war or depredation mentioned in sections 125, 126.

128. Whoever, being a public servant, and having the custody of any State prisoner or prisoner of war, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Public servant voluntarily allowing prisoner of State or war in his custody to escape.

129. Whoever, being a public servant, and having the custody of any State prisoner or prisoner of war, negligently suffers such prisoner to escape from any place of confinement in which such prisoner is confined, shall be punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.

Public servant negligently suffering prisoner of State or war in his custody to escape.

130. Whoever knowingly aids or assists any State prisoner or prisoner of war in escaping from lawful custody, or rescues or attempts to rescue any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers, or attempts to offer, any resistance to the recapture of such prisoner, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Aiding escape of, rescuing, or harbouring, such prisoner.

Explanation.—A State prisoner or prisoner of war who is permitted to be at large on his parole within certain limits in British India is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

CHAPTER VII.

OF OFFENCES RELATING TO THE ARMY AND NAVY.

131. Whoever abets the committing of mutiny by an officer, soldier, or sailor in the army or navy of the Queen, or attempts to seduce any such officer, soldier, or sailor from his allegiance or his duty, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Abetting mutiny, or attempting to seduce a soldier or sailor from his duty.

Act XLV. of 1860.

Explanation.—In this section the words "officer" and "soldier" include any person subject to the Articles of War for the better government of Her Majesty's army, or to the Articles of War contained in Act No. V. of 1869.*

Abetment of mutiny, if mutiny is committed in consequence thereof.

132. Whoever abets the committing of mutiny by an officer, soldier, or sailor in the army or navy of the Queen, shall, if mutiny be committed in consequence of that abetment, be punished with death or with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Abetment of assault by soldier or sailor on his superior officer when in execution of his office.

133. Whoever abets an assault by an officer, soldier, or sailor in the army or navy of the Queen, on any superior officer being in the execution of his office, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Abetment of such assault, if the assault is committed.

134. Whoever abets an assault by an officer, soldier, or sailor in the army or navy of the Queen, on any superior officer being in the execution of his office, shall, if such assault be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Abetment of desertion of soldier or sailor.

135. Whoever abets the desertion of any officer, soldier, or sailor in the army or navy of the Queen, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Harbouring deserter.

136. Whoever, except as hereinafter excepted, knowing, and having reason to believe, that an officer, soldier, or sailor in the army or navy of the Queen has deserted, harbours such officer, soldier, or sailor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Exception.—This provision does not extend to the case in which the harbour is given by a wife to her husband.

Deserter concealed on board merchant-vessel through negligence of master.

137. The master or person in charge of a merchant-vessel, on board of which any deserter from the army or navy of the Queen is concealed, shall, though ignorant of such concealment, be liable to a penalty not exceeding five hundred rupees, if he might have known of such concealment, but for some neglect of his duty as such master or person in charge, or but for some want of discipline on board of the vessel.

Abetment of act of insubordination by soldier or sailor.

138. Whoever abets what he knows to be an act of insubordination by an officer, soldier, or sailor in the army or navy of the Queen, shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

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* This explanation has been added by Act XXVII. of 1870, s. 6.

Application of foregoing sections to the Indian Marine Service.

138A.* The foregoing sections of this chapter shall apply as if Her Majesty's Indian Marine Service were comprised in the navy of the Queen. Act XLV. of 1860.

Persons subject to Articles of War.

139. No person subject to any Articles of War for the army or navy of the Queen, or for any part of such army or navy, is subject to punishment under this Code for any of the offences defined in this chapter.

Wearing dress of soldier.

140. Whoever, not being a soldier in the military or naval service of the Queen, wears any garb, or carries any token resembling any garb or token used by such a soldier, with the intention that it may be believed that he is such a soldier, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

CHAPTER VIII.

OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

Unlawful assembly.

141. An assembly of five or more persons is designated an "unlawful assembly," if the common object of the persons composing that assembly is—

First.—To overawe, by criminal force, or show of criminal force, the Legislative or Executive Government of India, or the Government of any Presidency, or any Lieutenant-Governor, or any public servant in the exercise of the lawful power of such public servant; or,

Second.—To resist the execution of any law or of any legal process; or,

Third.—To commit any mischief or criminal trespass, or other offence; or,

Fourth.—By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water, or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or,

Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled may subsequently become an unlawful assembly.

Being member of unlawful assembly.

142. Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

Punishment.

143. Whoever is a member of an unlawful assembly shall be punished, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

* New section, inserted by the Indian Marine Act (XIV. of 1887), s. 79.

Act XLV. of 1860.

Joining unlawful assembly armed with deadly weapon.

144. Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Joining or continuing in unlawful assembly, knowing it has been commanded to disperse.

145. Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may ext end to two years, or with fine, or with both.

Force used by one member in prosecution of common object.

146. Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

Punishment for rioting.

147. Whoever is guilty of rioting shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Rioting, armed with deadly weapon.

148. Whoever is guilty of rioting, being armed with a deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either descri ption for a term which may extend to three years, or with fine, or with both.

Every member of unlawful assembly guilty of offence committed in prosecution of common object.

149. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

Hiring, or conniving at hiring, of persons to join an unlawful assembly.

150. Whoever hires, or engage s or employs, or promotes or connives at the hiring, engagement, or employment of any person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person, as a member of such unlawful assembly, in pursuance of such hiring, engagement, or employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

Knowingly joining or continuing in assembly of five or more persons after command to disperse.

151. Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Explanation.—If the assembly is an unlawful assembly within the meaning of section 141, the offender will be punishable under section 145.

Assaultiag or obstructing public servant when suppressing riot, &c.

152. Whoever assaults or threatens to assault, or obstructs or attempts to obstruct, any public servant in the discharge of his duty as such public servant in endeavouring to disperse an unlawful assembly, or to suppress a riot or

affray, or uses, or threatens or attempts to use, criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Wantonly giving provocation, with intent to cause riot—

If rioting be committed;

If not committed.

153. Whoever malignantly or wantonly, by doing anything which is illegal, gives provocation to any person, intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Owner or occupier of land on which an unlawful assembly is held.

154. Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand rupees, if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest police-station, and do not in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it, and, in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

Liability of person for whose benefit a riot is committed.

155. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

Liability of agent of owner or occupier for whose benefit a riot is committed.

156. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to riot, or who has accepted or derived any benefit therefrom, the agent or manager of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place, and for suppressing and dispersing the same.

Harbouring persons hired for an unlawful assembly.

157. Whoever harbours, receives, or assembles in any house or premises in his occupation or charge, or under his control, any persons, knowing that such persons have been hired, engaged, or employed, or are about to be hired, engaged, or employed, to join or become members of an unlawful assembly, shall be punished with

Act XLV. of 1860.

imprisonment of either description for a term which may extend to six months, or with fine, or with both.

158. Whoever is engaged or hired, or offers or attempts to be hired or engaged, to do or assist in doing any of the acts specified in section 141, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both;

Being hired to take part in unlawful assembly or riot.

and whoever, being so engaged or hired as aforesaid, goes armed, or engages or offers to go armed, with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Or to go armed.

159. When two or more persons, by fighting in a public place, disturb the public peace, they are said to "commit an affray."

Affray.

160. Whoever commits an affray shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

Punishment for committing affray.

CHAPTER IX.

OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS.*

161. Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing, or forbearing to do, any official act, or for showing, or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering, or attempting to render, any service or disservice to any person, with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Public servant taking gratification other than legal remuneration in respect of an official act.

Explanations.—"Expecting to be a public servant."—If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

"Gratification."—The word "gratification" is not restricted to pecuniary gratifications, or to gratifications estimable in money.

"Legal remuneration."—The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government which he serves to accept.

"A motive or reward for doing."—A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words.

* Act IV. of 1879 declares railway-servants to be public servants.

Illustrations.

(*a*.) A, a moonsiff, obtains from Z, a banker, a situation in Z's bank for A's brother, as a reward to A for deciding a cause in favour of Z. A has committed the offence defined in this section.

(*b*.) A, holding the office of Resident at the Court of a subsidiary Power, accepts a lakh of rupees from the Minister of that Power. It does not appear that A accepted this sum as a motive or a reward for doing or forbearing to do any particular official act, or for rendering or attempting to render any particular service to that Power with the British Government. But it does appear that A accepted the sum as a motive or reward for generally showing favour in the exercise of his official functions to that Power. A has committed the offence defined in this section.

(*c*.) A, a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z, and thus induces Z to give A money as a reward for this service. A has committed the offence defined in this section.

Taking gratification in order, by corrupt or illegal means, to influence public servant.

162. Whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person, with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Taking gratification for exercise of personal influence with public servant.

163. Whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration.

An advocate who receives a fee for arguing a case before a Judge; a person who receives pay for arranging and correcting a memorial addressed to Government, setting forth the services and claims of the memorialist; a paid agent for a condemned criminal, who lays before the Government statements tending to show that the condemnation was unjust, are not within this section, inasmuch as they do not exercise or profess to exercise personal influence.

Punishment for abetment by public servant of offence above defined.

164. Whoever, being a public servant, in respect of whom either of the offences defined in the last two preceding sections is committed, abets the offence, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Illustration.

A is a public servant. B, A's wife, receives a present as a motive for soliciting A to give an office to a particular person. A abets her doing so. B is punishable with imprisonment for a term not exceeding one year, or with fine, or with both. A is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

Act XLV. of 1860.

Public servant obtaining any valuable thing, without consideration, from person concerned in any proceeding or business transacted by such public servant.

165. Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any valuable thing, without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be, concerned in any proceeding or business transacted, or about to be transacted, by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate or from any person whom he knows to be interested in, or related to, the person so concerned, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Illustrations.

(*a*.) A, a Collector, hires a house of Z, who has a settlement-case pending before him. It is agreed that A shall pay fifty rupees a month, the house being such that, if the bargain were made in good faith, A would be required to pay two hundred rupees a month. A has obtained a valuable thing from Z without adequate consideration.

(*b*.) A, a Judge, buys of Z, who has a case pending in A's Court, Government promissory notes at a discount when they are selling in the market at a premium. A has obtained a valuable thing from Z without adequate consideration.

(*c*.) Z's brother is apprehended and taken before A, a Magistrate, on a charge of perjury. A sells to Z shares in a bank at a premium when they are selling in the market at a discount. Z pays A for the shares accordingly. The money so obtained by A is a valuable thing obtained by him without adequate consideration.

Public servant disobeying law with intent to cause injury to any person.

166. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration.

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.

Public servant framing an incorrect document with intent to cause injury.

167. Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Public servant unlawfully engaging in trade.

168. Whoever, being a public servant, and being legally bound, as such public servant, not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Public servant unlawfully buying or bidding for property.

169. Whoever, being a public servant, and being legally bound, as such public servant not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly or in shares with others, shall be punished with simple imprisonment for a term

which may extend to two years, or with fine, or with both; and the property, if purchased, shall be confiscated.

Personating a public servant.

170. Whoever pretends to hold any particular office as a public servant, knowing that he does not hold such office or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Wearing garb or carrying token used by public servant with fraudulent intent.

171. Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

CHAPTER X.

OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

Absconding to avoid service of summons or other proceeding from public servant.

172. Whoever absconds in order to avoid being served with a summons, notice, or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice, or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or if the summons, notice, or order is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Preventing service of summons or other proceeding, or preventing publication thereof.

173. Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice, or order proceeding from any public servant, legally competent, as such public servant, to issue such summons, notice, or order, or intentionally prevents the lawful affixing to any place of any such summons, notice, or order, or intentionally removes any such summons, notice, or order, from any place to which it is lawfully affixed, or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both: or, if the summons, notice, order, or proclamation is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Non-attendance in obedience to an order from a public servant.

174. Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order, or proclamation proceeding from any public servant, legally competent, as such public servant, to issue the same, intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it

Act XLV. of 1860.

is lawful for him to depart, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or, if the summons, notice, order, or proclamation is to attend in person or by an agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustrations.

(*a.*) A, being legally bound to appear before the Supreme Court at Calcutta, in obedience to a subpœna issuing from that Court, intentionally omits to appear. A has committed the offence defined in this section.

(*b.*) A, being legally bound to appear before a Zillah Judge, as a witness, in obedience to a summons issued by that Zillah Judge, intentionally omits to appear. A has committed the offence defined in this section.

Omission to produce document to public servant by person legally bound to produce it.

175. Whoever, being legally bound to produce or deliver up any document to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or, if the document is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustration.

A, being legally bound to produce a document before a Zilla Court, intentionally omits to produce the same. A has committed the offence defined in this section.

Omission to give notice or information to public servant by person legally bound to give it.

176. Whoever being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Furnishing false information.

177. Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both; or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations.

(*a.*) A, a landholder, knowing of the commission of a murder within the limit of his estate, wilfully misinforms the Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.

(*b*.) A, a village-watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound, under cl. 5, s. 7, Reg. III., 1821, of the Bengal Code,* to give early and punctual information of the above fact to the officer of the nearest police-station, wilfully misinforms the police-officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in this section.

Refusing oath when duly required to take oath by a public servant.

178. Whoever refuses to bind himself by an oath "or affirmation"† to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Refusing to answer a public servant authorized to question.

179. Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant, in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Refusing to sign statement.

180. Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

False statement on oath to public servant or person authorized to administer an oath.

181. Whoever, being legally bound by an oath "or affirmation"† to state the truth on any subject to any public servant or other person authorized by law to administer such oath "or affirmation,"† makes to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

False information with intent to cause a public servant to use his lawful power to the injury of another person.

182. Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant to use the lawful power of such public servant to the injury or annoyance of any person, or to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustrations.

(*a*.) A informs a Magistrate that Z, a police-officer, subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.

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* Repealed by Act XVII. of 1862.

† The words quoted have been inserted by the Oaths Act (X. of 1873), s. 15.

(*b*.) A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

Resistance to taking of property by lawful authority of public servant.

183. Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Obstructing sale of property offered for sale by authority of public servant.

184. Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant as such shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Illegal purchase or bid for property offered for sale by authority of public servant.

185. Whoever, at any sale of property held by the lawful authority of a public servant as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Obstructing public servant in discharge of public functions.

186. Whoever voluntarily obstructs any public servant in the discharge of his public functions shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Omission to assist public servant when bound by law to give assistance.

187. Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both; and, if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or of suppressing a riot or affray, or of apprehending a person charged with or guilty of an offence, or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Disobedience to order duly promulgated by public servant.

188. Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both; and, if such disobedience

causes or tends to cause danger to human life, health, or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Act XLV. of 1860.

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

Illustration.

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger or riot. A has committed the offence defined in this section.

Threat of injury to a public servant.

189. Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Threat of injury to induce person to refrain from applying for protection to public servant.

190. Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered as such to give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XI.

OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

Giving false evidence.

191. Whoever, being legally bound by an oath, or by any express provision of law, to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

Explanation 1.—A statement is within the meaning of this section whether it is made verbally or otherwise.

Explanation 2.—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

Illustrations.

(*a.*) A, in support of a just claim which B has against Z for one thousand rupees, falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.

(*b.*) A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false, and, therefore, gives false evidence.

Act XLV. of 1860.

(*c*.) A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwri ting of Z; A in good faith believing it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

(*d*.) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence, whether Z was at that place on the day named or not.

(*e*.) A, an interpreter, or translator, gives or certifies as a true interpretation or translation of a statement or document, which he is bound by oath to interpret or translate truly, that which is not, and which he does not believe to be, a true interpretation or translation. A has given false evidence.

Fabricating false evidence.

192. Whoever causes any circumstance to exist, or makes any false entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry, or false statement, may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry, or false statement, so appearing in evidence, may cause any person, who, in such proceeding, is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence."

Illustrations.

(*a*.) A puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

(*b*.) A makes a false entry in his shop-book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.

(*c*.) A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting, purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the police are likely to search. A has fabricated false evidence.

Punishment for false evidence.

193. Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and whoever intentionally gives or fabricates false evidence in any other case shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1.—A trial before a Court Martial* is a judicial proceeding.

Explanation 2.—An investigation directed by law preliminary to a proceeding before a Court of Justice is a stage of judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration.

A, in an inquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this inquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation 3.—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

* Here the words, "or before a Military Court of Request," have been omitted, having been repealed by the Cantonments Act (XIII. of 1889).

Illustration.

A, in an inquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this inquiry is a stage of a judicial proceeding, A has given false evidence.

194. Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital "by the law of British India or England,"* shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine ;

Giving or fabricating false evidence with intent to procure conviction of capital offence.

and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.

If innocent person be thereby convicted and executed.

195. Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which "by the law of British India or England,"* is not capital but punishable with transportation for life, or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

Giving or fabricating false evidence with intent to procure conviction of offence punishable with transportation or imprisonment.

Illustration.

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is transportation for life, or rigorous imprisonment for a term which may extend to ten years, with or without fine. A, therefore, is liable to such transportation or imprisonment, with or without fine.

196. Whoever corruptly uses, or attempts to use, as true or genuine evidence, any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

Using evidence known to be false.

197. Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

Issuing or signing false certificate.

198. Whoever corruptly uses, or attempts to use, any such certificate as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Using as true a certificate known to be false.

199. Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorized by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false, or does not

False statement made in declaration which is by law receivable as evidence.

*In ss. 194 and 195, as amended by s. 7 of Act XXVII. of 1870, for the words "by this Code or the law of England" the words quoted have been substituted.—See the Indian Railways Act (IX. of 1890), s. 149.

Act XLV. of 1860.

believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

Using as true such declaration, knowing it to be false.

200. Whoever corruptly uses, or attempts to use, as true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Explanation.—A declaration which is inadmissible merely upon the ground of some informality is a declaration within the meaning of sections 199 and 200.

Causing disappearance of evidence of offence, or giving false information to screen offender.

201. Whoever, knowing, or having reason to believe, that an offence has been committed, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall, if the offence which he knows or believes to have been committed is punishable with death,

If a capital offence;

be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

If punishable with transportation;

and, if the offence is punishable with transportation for life or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

If punishable with less than ten years' imprisonment.

and, if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

Illustration.

A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

Intentional omission to give information of offence by person bound to inform.

202. Whoever, knowing, or having reason to believe, that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Giving false information respecting an offence committed.

203. Whoever, knowing, or having reason to believe, that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Destruction of document to prevent its production as evidence.

204. Whoever secretes or destroys any document which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant as such, or obliterates or renders illegible the whole, or any part, of such document with the intention of preventing the same from being produced or used as evidence before such Court or

public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. Act XLV. of 1860.

False personation for purpose of act or proceeding in suit.

205. Whoever falsely personates another, and, in such assumed character, makes any admission or statement, or confesses judgment, or causes any process to be issued, or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Fraudulent removal or concealment of property to prevent its seizure as a forfeiture or in execution of a decree.

206. Whoever fraudulently removes, conceals, transfers, or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture, or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made, by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Fraudulent claim to property to prevent its seizure as forfeited or in execution.

207. Whoever fraudulently accepts, receives, or claims any property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practises any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made, by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Fraudulently suffering decree for sum not due.

208. Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due, or for a larger sum than is due to such person, or for any property or interest in property to which such person is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustration.

A institutes a suit against Z. Z, knowing that A is likely to obtain a decree against him, fraudulently suffers a judgment to pass against him for a larger amount at the suit of B, who has no just claim against him, in order that B, either on his own account or for the benefit of Z, may share in the proceeds of any sale of Z's property which may be made under A's decree. Z has committed an offence under this section.

Dishonestly making false claim in Court.

209. Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished

Act XLV. of 1860.

with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

210. Whoever fraudulently obtains a decree or order against any person for a sum not due, or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied, or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Fraudulently obtaining decree for sum not due.

211. Whoever, with intent to cause injury to any person, institutes, or causes to be instituted, any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both ;

False charge of offence made with intent to injure.

and, if such criminal proceeding be instituted on a false charge of an offence punishable with death, transportation for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

212. Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment, shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine ;

Harbouring an offender—

If a capital offence ;

and, if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

If punishable with transportation for life, or with imprisonment.

and, if the offence is punishable with imprisonment which may extend to one year, and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

Exception.—This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

Illustration.

A, knowing that B has committed dacoity, knowingly conceals B in order to screen him from legal punishment. Here, as B is liable to transportation for life, A is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

213. Whoever accepts, or attempts to obtain, or agrees to accept, any gratification for himself or any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence, or of his screening any person from legal punishment for any offence, or of his

Taking gift, &c., to screen an offender from punishment—

not proceeding against any person for the purpose of bringing him to legal punishment, shall, if the offence is punishable with death be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

If a capital offence ;

and, if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

If punishable with transportation for life, or with imprisonment.

and, if the offence is punishable with imprisonment not extending to ten years shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

214. Whoever gives or causes, or offers or agrees to give or cause, any gratification to any person, or to restore or cause the restoration of any property to any person, in consideration of that person's concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment, shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

Offering gift or restoration of property in consideration of screening offender.

If a capital offence ;

and, if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

If punishable with transportation for life, or with imprisonment.

and, if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

Exception.—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded.*

215. Whoever takes, or agrees or consents to take, any gratification under pretence or on account of helping any person to recover any moveable property, of which he shall have been deprived by any offence punishable under this Code, shall, unless he uses all means in his power to cause the offender to be apprehended and convicted of the offence, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Taking gift to help to recover stolen property, &c.

216. Whenever any person convicted of, or charged with, an offence, being in lawful custody for that offence, escapes from such custody, or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours or conceals that person, with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say,

Harbouring an offender who has escaped from custody, or whose apprehension has been ordered—

* This exception has been substituted by Act VIII. of 1882, s. 6, for the one originally enacted ; and the illustrations have been repealed by Act X. of 1882.

Act XLV. of 1860.

if the offence for which the person was in custody or is ordered to be apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

If a capital offence ;

if the offence is punishable with transportation for life, or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine ;

If punishable with transportation for life, or with imprisonment.

and, if the offence is punishable with imprisonment which may extend to one year, and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

Exception.—This provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.

217. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture, or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Public servant disobeying a direction of law with intent to save person from punishment or property from forfeiture.

" Offence " in this section includes also any act or omission of which a person is alleged to have been guilty out of British India which, if he had been guilty of it in British India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in British India ; and every such act or omission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in British India.*

218. Whoever, being a public servant, and being, as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture, or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.

219. Whoever, being a public servant, corruptly or maliciously makes or pronounces, in any stage of a judicial proceeding, any report, order, verdict, or decision, which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Public servant in judicial proceeding corruptly making report, &c., contrary to law.

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* This paragraph has been inserted by Act X. of 1886, s. 23.

ERRATUM.

The definition of " Offence " as given under section 217 should be inserted under the first paragraph of section 216.—See s. 23 of Act X. of 1886.

216A. Whoever, knowing or having reason to believe that any persons are about to commit or have recently committed robbery or dacoity, harbours them or any of them, with the intention of facilitating the commission of such robbery or dacoity or of screening them or any of them from punishment, shall be punished with rigorous imprisonment for a term which may extend to seven years, & shall also be liable to fine.

Explanation. For the purposes of this section it is immaterial whether the robbery or dacoity is intended to be committed, or has been committed, within or without British India.

Exception. This provision does not extend to a case where the harbour is by the husband or wife of the offender.

216B. In ss. 212, 216 & 216A the word harbour includes the supplying a person with shelter food, drink money, clothes, arms ammunition or means of conveyance, or the assisting a person in any way to evade apprehension

added by s. 8 of act III of 1894

Commitment for trial or confinement by person having authority who knows he is acting contrary to law.

220. Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or to confinement, or keeps any person in confinement, in the exercise of that authority, knowing that, in so doing, he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Intentional omission to apprehend on part of public servant bound to apprehend.

221. Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with, or liable to be apprehended for, an offence, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping, or attempting to escape, from such confinement, shall be punished as follows, that is to say :—

Punishment.

With imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with death ; or

With imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with transportation for life or imprisonment for a term which may extend to ten years ; or

With imprisonment of either description for a term which may extend to two years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with imprisonment for a term of less than ten years.

Intentional omission to apprehend on part of public servant bound to apprehend person under sentence or lawfully committed.

222. Whoever, being a public servant, legally bound as such public servant to apprehend, or to keep in confinement, any person under sentence of a Court of Justice for any offence, "or lawfully committed to custody,"* intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping, or attempting to escape, from such confinement, shall be punished as follows, that is to say :—

Punishment.

With transportation for life or with imprisonment of either description for a term which may extend to fourteen years, with or without fine, if the person in confinement, or who ought to have been apprehended, is under sentence of death ; or

With imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, or by virtue of a commutation of such sentence, to transportation for life or penal servitude for life, or to transportation or penal servitude or imprisonment for a term of ten years or upwards ; or

With imprisonment of either description for a term which may extend to three years, or with fine, or with both, if the person in confinement, or who

* The words quoted have been inserted by Act XXVII. of 1870, s. 8.

Act XLV. of 1860.

ought to have been apprehended, is subject, by a sentence of a Court of Justice, to imprisonment for a term not extending to ten years, " or if the person was lawfully committed to custody."*

Escape from confinement or custody negligently suffered by a public servant.

223. Whoever, being a public servant, legally bound as such public servant to keep in confinement any person charged with, or convicted of, any offence, " or lawfully committed to custody,"* negligently suffers such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Resistance or obstruction by a person to his lawful apprehension.

224. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged, or of which he has been convicted, or escapes, or attempts to escape, from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation.—The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.

Resistance or obstruction to lawful apprehension of another person.

Punishment.

225. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both ;

Or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with, or liable to be apprehended for, an offence punishable with transportation for life or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

Or, if the person to be apprehended or rescued, or attempted to be rescued, is charged with, or liable to be apprehended for, an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

Or, if the person to be apprehended or rescued, or attempted to be rescued, is liable, under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to transportation for life, or to transportation, penal servitude, or imprisonment for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

Or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

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* The words quoted have been added by Act XXVII. of 1870, s. 8.

Act XLV. of 1860.

Omission to apprehend, or sufferance of escape, on part of public servant in cases not otherwise provided for.

225A.* Whoever, being a public servant legally bound as such public servant to apprehend, or to keep in confinement, any person in any case not provided for in section 221, section 222, or section 223, or in any other law for the time being in force, omits to apprehend that person, or suffers him to escape from confinement, shall be punished—

(*a*) if he does so intentionally, with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and

(*b*) if he does so negligently, with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Resistance or obstruction to lawful apprehension, or escape, or rescue, in cases not otherwise provided for.

225B.* (*1*) Whoever, in any case not provided for in section 224 or section 225, or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

(*2*) Section 651 of the Code of Civil Procedure is hereby repealed.

Unlawful return from transportation.

226. Whoever, having been lawfully transported, returns from such transportation, the term of such transportation not having expired, and his punishment not having been remitted, shall be punished with transportation for life, and shall also be liable to fine, and to be imprisoned with rigorous imprisonment for a term not exceeding three years before he is so transported.

Violation of condition of remission of punishment.

227. Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced if he has already suffered no part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

Intentional insult or interruption to public servant sitting in any stage of a judicial proceeding.

228. Whoever intentionally offers any insult or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Personation of a juror or assessor.

229. Whoever, by personation or otherwise, shall intentionally cause or knowingly suffer himself to be returned, empannelled, or sworn as a juryman or assessor in any case in which he knows that he is not entitled by law to be so returned, empannelled or sworn, or knowing himself to have been so returned, empannelled, or sworn contrary to law, shall voluntarily serve on such jury or as such assessor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

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* Ss. 225A and 225B have been substituted by Act X. of 1886, s. 24, for s. 225A as inserted in the Penal Code by Act XXVII. of 1870.

Act XLV. of 1860.

CHAPTER XII.

OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

"Coin" defined.

230. Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used.*

Queen's coin.

Coin stamped and issued by the authority of the Queen, or by the authority of the Government of India, or of the Government of any Presidency, or of any Government in the Queen's dominions, is the Queen's coin.

Illustrations.

(*a*) Cowries are not coin.

(*b*) Lumps of unstamped copper, though used as money, are not coin.

(*c*) Medals are not coin, inasmuch as they are not intended to be used as money.

(*d*) The coin denominated as the Company's rupee is the Queen's coin.

Counterfeiting coin.

231. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—A person commits this offence, who, intending to practise deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

Counterfeiting the Queen's coin.

232. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Making or selling instrument for counterfeiting coin.

233. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells, or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Making or selling instrument for counterfeiting Queen's coin.

234. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells, or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Possession of instrument or material for the purpose of using the same for counterfeiting coin.

235. Whoever is in possession of any instrument or material for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

* This paragraph has been substituted by Act XIX. of 1872 for the one originall ; enacted.

and, if the coin to be counterfeited is the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Abetting in India the counterfeiting out of India of coin.

236. Whoever, being within British India, abets the counterfeiting of coin out of British India, shall be punished in the same manner as if he abetted the counterfeiting of such coin within British India.

Import and export of counterfeit coin.

237. Whoever imports into British India, or exports therefrom, any counterfeit coin, knowing or having reason to believe that the same is counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Import or export of counterfeits of the Queen's coin.

238. Whoever imports into British India, or exports therefrom, any counterfeit coin which he knows, or has reason to believe, to be a counterfeit of the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Delivery to another of coin, possessed with the knowledge that it is counterfeit.

239. Whoever, having any counterfeit coin, which, at the time when he became possessed of it, he knew to be counterfeit, fraudulently, or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Delivery of Queen's coin, possessed with the knowledge that it is counterfeit.

240. Whoever, having any counterfeit coin which is a counterfeit of the Queen's coin, and which, at the time when he became possessed of it, he knew to be a counterfeit of the Queen's coin, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Delivery to another of coin as genuine, which, when first possessed, the deliverer did not know to be counterfeit.

241. Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin, which he knows to be counterfeit, but which he did not know to be counterfeit at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

Illustration.

A, a coiner, delivers counterfeit Company's rupees to his accomplice B for the purpose of uttering them. B sells the rupees to C, another utterer, who buys them, knowing them to be counterfeit. C pays away the rupees for goods to D, who receives them, not knowing them to be counterfeit. D, after receiving the rupees, discovers that they are counterfeit, and pays them away as if they were good. Here D is punishable only under this section, but B and C are punishable under s. 239 or 240, as the case may be.

Possession of counterfeit coin by person who knew it to be counterfeit when he became possessed thereof.

242. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Act XLV. of 1860.

243. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin which is a counterfeit of the Queen's coin, having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Possession of Queen's coin by person who knew it to be counterfeit when he became possessed thereof.

244. Whoever, being employed in any mint, lawfully established in British India, does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Person employed in mint causing coin to be of different weight or composition from that fixed by law.

245. Whoever, without lawful authority, takes out of any mint, lawfully established in British India, any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Unlawfully taking from a mint any coining instrument.

246. Whoever fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Fraudulently or dishonestly diminishing weight or altering composition of coin.

Explanation.—A person who scoops out part of the coin, and puts anything else into the cavity, alters the composition of that coin.

247. Whoever fraudulently or dishonestly performs on any of the Queen's coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Fraudulently or dishonestly diminishing weight or altering composition of Queen's coin.

248. Whoever performs on any coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Altering appearance of coin with intent that it shall pass as coin of different description.

249. Whoever performs on any of the Queen's coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Altering appearance of Queen's coin with intent that it shall pass as coin of different description.

250. Whoever, having coin in his possession with respect to which the offence defined in section 246 or 248 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently, or with intent that fraud may

Delivery to another of coin possessed with knowledge that it is altered.

be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Delivery of Queen's coin possessed with the knowledge that it is altered.

251. Whoever, having coin in his possession with respect to which the offence defined in section 247 or 249 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently, or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Possession of altered coin by a possessor who knew it to be altered when he became possessed thereof.

252. Whoever fraudulently, or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 246 or 248 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof.

253. Whoever fraudulently, or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 247 or 249 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Delivery to another of coin as genuine, which, when first possessed, the deliverer did not know to be altered.

254. Whoever delivers to any other person as genuine, or as a coin of a different description from what it is, or attempts to induce any person to receive as genuine, or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in section 246, 247, 248, or 249, has been performed, but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed or attempted to be passed.

Counterfeiting a Government stamp.

255. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by Government for the purpose of revenue, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

Act XLV. of 1860.

Having possession of instrument or material for purpose of counterfeiting Government stamp.

256. Whoever has in his possession any instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Making or selling instrument for purpose of counterfeiting Government stamp.

257. Whoever makes, or performs any part of the process of making, or buys, or sells, or disposes of, any instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Sale of counterfeit Government stamp.

258. Whoever sells, or offers for sale, any stamp which he knows or has reason to believe to be a counterfeit of any stamp issued by Government for the purpose of revenue shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Having possession of counterfeit Government stamp.

259. Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government for the purpose of revenue, intending to use or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Using as genuine Government stamp known to be counterfeit.

260. Whoever uses as genuine any stamp, knowing it to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Effacing writing from substance bearing Government stamp, or removing from document a stamp used for it, with intent to cause loss to Government.

261. Whoever fraudulently, or with intent to cause loss to Government, removes or effaces from any substance bearing any stamp issued by Government for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document a stamp which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Using a Government stamp known to have been before used.

262. Whoever fraudulently, or with intent to cause loss to Government, uses for any purpose a stamp issued by Government for the purpose of revenue, which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Erasure of mark denoting that stamp has been used.

263. Whoever fraudulently, or with intent to cause loss to Government, erases or removes from a stamp issued by Government for the purpose of revenue any mark put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession, or sells or disposes of, any

such stamp from which such mark has been erased, or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. Act XLV. of 1860.

CHAPTER XIII.

OF OFFENCES RELATING TO WEIGHTS AND MEASURES.

264. Whoever fraudulently uses any instrument for weighing, which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Fraudulent use of false instrument for weighing.

265. Whoever fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity, as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Fraudulent use of false weight or measure.

266. Whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be false, and intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Being in possession of false weights or measures.

267. Whoever makes, sells, or disposes of any instrument for weighing, or any weight, or any measure of length or capacity which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Making or selling false weights or measures.

CHAPTER XIV.

OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY, AND MORALS.

268. A person is guilty of a public nuisance, who does any act, or is guilty of an illegal omission, which causes any common injury, danger, or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right.

Public nuisance.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

269. Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Negligent act likely to spread infection of any disease dangerous to life.

Act XLV of 1860.

Malignant act likely to spread infection of any disease dangerous to life.

270. Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Disobedience to a quarantine-rule.

271. Whoever knowingly disobeys any rule made and promulgated by the Government of India, or by any Government, for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places,* shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Adulteration of food or drink intended for sale.

272. Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Sale of noxious food or drink.

273. Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Adulteration of drugs.

274. Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Sale of adulterated drugs.

275. Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Sale of any drug as a different drug or preparation.

276. Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes any drug or medical preparation as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

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* See Act I. of 1870 (*to provide rules relating to quarantine*).

277. Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Fouling the water of a public spring or reservoir.

278. Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood, or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

Making atmosphere noxious to health.

279. Whoever drives any vehicle, or rides, on any public way, in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Rash driving or riding on a public way.

280. Whoever navigates any vessel in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Rash navigation of a vessel.

281. Whoever exhibits any false light, mark, or buoy, intending or knowing it to be likely that such exhibition will mislead any navigator, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Exhibition of a false light, mark, or buoy.

282. Whoever knowingly or negligently conveys, or causes to be conveyed, for hire any person by water in any vessel, when that vessel is in such a state or so loaded as to endanger the life of that person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Conveying person by water for hire in a vessel overloaded or unsafe.

283. Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction, or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred rupees.

Danger or obstruction in a public way or navigation.

284. Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against any probable danger to human life from such poisonous substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligent conduct with respect to any poisonous substance.

285. Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard

Negligent conduct with respect to fire or combustible matter.

Act XLV. of 1860.

against any probable danger to human life from such fire or combustible matter, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligent conduct with respect to explosive substance.

286. Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligent conduct with respect to machinery in possession or under charge of offender.

287. Whoever does, with any machinery, any act so rashly or negligently as to endanger human life or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligence with respect to pulling down or repairing buildings.

288. Whoever, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligence with respect to animals.

289. Whoever knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Punishment for public nuisance.

290. Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees.

Continuance of nuisance after injunction to discontinue.

291. Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

Sale, &c., of obscene books.

292. Whoever sells or distributes, imports or prints for sale or hire, or wilfully exhibits to public view, any obscene book, pamphlet, paper, drawing, painting, representation, or figure, or attempts or offers so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Exception.—This section does not extend to any representation sculptured, engraved, painted, or otherwise represented, on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose. Act XLV. of 1860.

Having in possession obscene books for sale or exhibition.

293. Whoever has in his possession any such obscene book or other thing as is mentioned in the last preceding section for the purpose of sale, distribution, or public exhibition, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Obscene songs.

294. Whoever sings, recites, or utters, in or near any public place, any obscene song, ballad, or words, to the annoyance of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Keeping lottery-office.

294A. Whoever keeps any office or place for the purpose of drawing any lottery not authorized by Government, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number, or figure in any such lottery, shall be punished with fine which may extend to one thousand rupees.*

CHAPTER XV.

OF OFFENCES RELATING TO RELIGION.

Injuring or defiling place of worship, with intent to insult the religion of any class.

295. Whoever destroys, damages, or defiles any place of worship, or any object held sacred by any class of persons, with the intention of thereby insulting the religion of any class of persons, or with the knowledge that any class of persons is likely to consider such destruction, damage, or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Disturbing religious assembly.

296. Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Trespassing on burial-places, &c.

297. Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted, thereby commits any trespass in any place of worship, or on any place of sepulture, or any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance

* New section, inserted by Act XXVII. of 1870, s. 10.

Act XLV. of 1860.

of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Uttering words, &c., with deliberate intent to wound the religious feelings of any person.

298. Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XVI.

OF OFFENCES AFFECTING THE HUMAN BODY.

Of Offences affecting Life.

Culpable homicide.

299. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Illustrations.

(*a.*) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in, and is killed. A has committed the offence of culpable homicide.

(*b.*) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause, Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(*c.*) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush, A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

Explanation 1.—A person who causes bodily injury to another, who is labouring under a disorder, disease, or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Explanation 3.—The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

Murder.

300. Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

2ndly, if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

3rdly, if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient, in the ordinary course of nature, to cause death, or—

4thly, if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations.

(*a.*) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(*b.*) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not, in the ordinary course of nature, kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury, as, in the ordinary course of nature, would cause death.

(*c.*) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder although he may not have intended to cause Z's death.

(*d.*) A, without any excuse, fires a loaded cannon into a crowd of persons, and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

When culpable homicide is not murder.

Exception 1.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:—

First.—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Illustrations.

(*a.*) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(*b.*) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(*c.*) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.

Act XLV. of 1860.

(*d*.) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(*e*.) A attempts to pull Z's nose. Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.

(*f*.) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

Exception 2.—Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law, and causes the death of the person against whom he is exercising such right of defence, without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration.

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A, believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3.—Culpable homicide is not murder if the offender, being a public servant, or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant, and without ill-will towards the person whose death is caused.

Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death, or takes the risk of death, with his own consent.

Illustration.

A, by instigation, voluntarily causes Z, a person under eighteen years of age, to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death. A has therefore abetted murder.

Culpable homicide by causing death of person other than person whose death was intended.

301. If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

Punishment for murder.

302. Whoever commits murder shall be punished with death or transportation for life, and shall also be liable to fine.

Act XLV. of 1860.

Punishment for murder by life-convict.

303. Whoever, being under sentence of transportation for life, commits murder, shall be punished with death.

Punishment for culpable homicide not amounting to murder.

304. Whoever commits culpable homicide not amounting to murder shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

Causing death by negligence.

304A. Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

Abetment of suicide of child or insane person.

305. If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide shall be punished with death or transportation for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

Abetment of suicide.

306. If any person commits suicide, whoever abets the commission of such suicide shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Attempt to murder.

307. Whoever does any act with such intention or knowledge, and under such circumstances, that, if he, by that act, caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to transportation for life, or to such punishment as is hereinbefore mentioned.

Attempts by life-convicts.

When any person offending under the section is under sentence of transportation for life, he may, if hurt is caused, be punished with death.†

Illustrations.

(*a.*) A shoots at Z with intention to kill him, under such circumstances, that, if death ensued, A would be guilty of murder. A is liable to punishment under this section.

(*b.*) A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.

(*c.*) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section; and, if by such firing he wounds Z, he is liable to the punishment provided by the latter part of *the first paragraph of*‡ this section.

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* New section, added by Act XXVII. of 1870, s. 12.

† This clause has been added by Act XXVII. of 1870, s. 11.

‡ The words italicized have been inserted by Act XII. of 1891.

Act XLV. of 1860.

(*d*.) A, intending to murder Z by poison, purchases poison, and mixes the same with food which remains in A's keeping: A has not yet committed the offence defined in this section. A places the food on Z's table, or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this section.

Attempt to commit culpable homicide.

308. Whoever does any act with such intention or knowledge, and under such circumstances, that, if he by that act, caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Illustration.

A, on grave and sudden provocation, fires a pistol at Z under such circumstances that, if he thereby caused death, he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

Attempt to commit suicide.

309. Whoever attempts to commit suicide, and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year, "or with fine, or with both."*

Thug.

310. Whoever, at any time after the passing of this Act, shall have been habitually associated with any other or others, for the purpose of committing robbery or child-stealing by means of, or accompanied with, murder, is a thug.

Punishment.

311. Whoever is a thug shall be punished with transportation for life, and shall also be liable to fine.

Of the Causing of Miscarriage; of Injuries to Unborn Children; of the Exposure of Infant; and of the Concealment of Births.

Causing miscarriage.

312. Whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—A woman who causes herself to miscarry is within the meaning of this section.

Causing miscarriage without woman's consent.

313. Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Death caused by act done with intent to cause miscarriage.

314. Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to

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* The words quoted have been substituted by Act VIII. of 1882, s. 7, for the words "and shall also be liable to fine."

ten years, and shall also be liable to fine; and if the act is done without the consent of the woman, shall be punished either with transportation for life, or with the punishment above mentioned.

If act done without woman's consent.

Explanation.—It is not essential to this offence that the offender should know that the act is likely to cause death.

315. Whoever, before the birth of any child, does any act with the intention of thereby preventing that child from being born alive, or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

Act done with intent to prevent child being born alive, or to cause it to die after birth.

316. Whoever does any act under such circumstances that, if he thereby caused death, he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Causing death of quick unborn child by an act amounting to culpable homicide.

Illustration.

A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured, but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

317. Whoever, being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Exposure and abandonment of child under twelve years by parent, or person having care of it.

Explanation.—This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

318. Whoever, by secretly burying, or otherwise disposing of, the dead body of a child, whether such child die before, or after, or during, its birth, intentionally conceals, or endeavours to conceal, the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Concealment of birth by secret disposal of dead body.

Of Hurt.

319. Whoever causes bodily pain, disease, or infirmity to any person, is said to cause hurt.

Hurt.

320. The following kinds of hurt only are designated as "grievous:"—

Grievous hurt.

First.—Emasculation.

Secondly.—Permanent privation of the sight of either eye.

Thirdly.—Permanent privation of the hearing of either ear.

Fourthly.—Privation of any member or joint.

Act XLV. of 1860.

Fifthly.—Destruction or permanent impairing of the powers of any member or joint.

Sixthly.—Permanent disfiguration of the head or face.

Seventhly.—Fracture or dislocation of a bone or tooth.

Eighthly.—Any hurt which endangers life, or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.

Voluntarily causing hurt.

321. Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt."

Voluntarily causing grievous hurt.

322. Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt."

Explanation.—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt if, intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Illustration.

A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

Punishment for voluntarily causing hurt.

323. Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Voluntarily causing hurt by dangerous weapons or means.

324. Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing, or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for voluntarily causing grievous hurt.

325. Whoever, except in the case provided by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Voluntarily causing grievous hurt by dangerous weapons or means.

326. Whoever, except in the case provided by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing, or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of

any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

327. Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal, or which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing hurt to extort property, or to constrain to an illegal act.

328. Whoever administers to, or causes to be taken by, any person any poison or any stupefying, intoxicating, or unwholesome drug or other thing, with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence, or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Causing hurt by means of poison, &c., with intent to commit an offence.

329. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer, or any person interested in such sufferer, to do anything which is illegal, or which may facilitate the commission of an offence, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing grievous hurt to extort property or to constrain to an illegal act.

330. Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Voluntarily causing hurt to extort confession, or to compel restoration of property.

Illustrations.

(*a.*) A, a police-officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.

(*b.*) A, a police officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section.

(*c.*) A, a revenue-officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this section.

(*d.*) A, a zemindar, tortures a raiyat in order to compel him to pay his rent. A is guilty of an offence under this section.

331. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the

Voluntarily causing grievous hurt to extort confession, or to compel restoration of property.

Act XLV. of 1860.

sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing hurt to deter public servant from his duty.

332. Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Voluntarily causing grievous hurt to deter public servant from his duty.

333. Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing hurt on provocation.

334. Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Causing grievous hurt on provocation.

335. Whoever "voluntarily"* causes grievous hurt on grave and sudden provocation if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both.

Explanation.—The last two sections are subject to the same provisos as exception 1, section 300.

Punishment for act endangering life or personal safety of others.

336. Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

Causing hurt by act endangering life or personal safety of others.

337. Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

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* The word quoted has been inserted by Act VIII. of 1882, s. 8.

338. Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Causing grievous hurt by act endangering life or personal safety of others.

Of Wrongful Restraint and Wrongful Confinement.

339. Whoever voluntarily obstructs any person, so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Wrongful restraint.

Exception.—The obstruction of a private way over land or water, which a person, in good faith, believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

Illustration.

A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

340. Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits is said "wrongfully to confine" that person.

Wrongful confinement.

Illustrations.

(*a*.) A causes Z to go within a walled space and locks Z in. Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.

(*b*.) A places men with fire-arms at the outlets of a building, and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

341. Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Punishment for wrongful restraint.

342. Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Punishment for wrongful confinement.

343. Whoever wrongfully confines any person for three days or more shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Wrongful confinement for three or more days.

344. Whoever wrongfully confines any person for ten days or more shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful confinement for ten or more days.

345. Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years,

Wrongful confinement of person for whose liberation a writ has been issued.

Act XLV. of 1860.

in addition to any term of imprisonment to which he may be liable under any other section of this Code.

Wrongful confinement in secret.

346. Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to, or discovered by, any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to any other punishment to which he may be liable for such wrongful confinement.

Wrongful confinement for the purpose of extorting property or constraining to an illegal act.

347. Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property or valuable security, or of constraining the person confined, or any person interested in such person, to do anything illegal, or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful confinement for the purpose of extorting confession, or of compelling restoration of property.

348. Whoever wrongfully confines any person for the purpose of extorting from the person confined, or any person interested in the person confined, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the person confined, or any person interested in the person confined, to restore, or to cause the restoration of, any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

Of Criminal Force and Assault.

Force.

349. A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling; provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion, in one of the three ways hereinafter described :—

First.—By his own bodily power.

Secondly.—By disposing any substance in such a manner that the motion, or change, or cessation of motion, takes place without any further act on his part or on the part of any other person.

Thirdly.—By inducing any animal to move, to change its motion, or to cease to move.

Criminal force.

350. Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to

cause, or knowing it to be likely that, by the use of such force, he will cause injury, fear, or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Illustrations.

(*a.*) Z is sitting in a moored boat in a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other act on any person's part. A has therefore intentionally used force to Z; and if he has done so without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear, or annoyance to Z, A has used criminal force to Z.

(*b.*) Z is riding in a chariot. A lashes Z's horses and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy Z, A has used criminal force to Z.

(*c.*) Z is riding in a palanquin. A, intending to rob Z, seizes the pole, and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z, and as A has acted thus intentionally, without Z's consent, in order to the commission of an offence, A has used criminal force to Z.

(*d.*) A intentionally pushes against Z in the street. Here A has, by his own bodily power, moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z; and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy Z, he has used criminal force to Z.

(*e.*) A throws a stone intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water, and dash up the water against Z's clothes, or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z or Z's clothes, A has used force to Z; and if he did so without Z's consent, intending thereby to injure, frighten, or annoy Z, he has used criminal force to Z.

(*f.*) A intentionally pulls up a woman's veil. Here A intentionally uses force to her; and if he does so without her consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy her, he has used criminal force to her.

(*g.*) Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally, by his own bodily power, causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling. A has therefore intentionally used force to Z; and if he has done this without Z's consent, intending or knowing it to be likely that he may thereby cause injury, fear, or annoyance to Z, A has used criminal force.

(*h.*) A incites a dog to spring upon Z without Z's consent. Here, if A intends to cause injury, fear, or annoyance to Z, he uses criminal force to Z.

Assault.

351. Whoever makes any gesture, or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparations such a meaning as may make those gestures or preparations amount to an assault.

Illustrations.

(*a.*) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

(*b*.) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(*c*.) A takes up a stick, saying to Z, "I will give you a beating." Here, though the words used by A could in no case amount to an assault, and though the mere gesture unaccompanied by any other circumstances might not amount to an assault, the gesture explained by the words may amount to an assault.

Punishment for using criminal force otherwise than on grave provocation.

352. Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Explanation.—Grave and sudden provocation will not mitigate the punishment for an offence under this section, if the provocation is sought, or voluntarily provoked by the offender as an excuse for the offence—or

If the provocation is given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant—or

If the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence is a question of fact.

Using criminal force to deter a public servant from discharge of his duty.

353. Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done, or attempted to be done, by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or use of criminal force to woman with intent to outrage her modesty.

354. Whoever assaults or uses criminal force to any woman, intending to outrage, or knowing it to be likely that he will thereby outrage, her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force with intent to dishonour person otherwise than on grave provocation.

355. Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force in attempt to commit theft of property carried by a person.

356. Whoever assaults or uses criminal force to any person in attempting to commit theft on any property which that person is then wearing or carrying, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force in attempt wrongfully to confine person.

357. Whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Act XLV. of 1860.

Assaulting or using criminal force on grave provocation.

358. Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Explanation.—The last section is subject to the same explanation as section 352.

OF KIDNAPPING, ABDUCTION, SLAVERY, AND FORCED LABOUR.

Kidnapping.

359. Kidnapping is of two kinds: kidnapping from British India, and kidnapping from lawful guardianship.

Kidnapping from British India.

360. Whoever conveys any person beyond the limits of British India without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from British India.

Kidnapping from lawful guardianship.

361. Whoever takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation.—The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception.—This section does not extend to the act of any person who, in good faith, believes himself to be the father of an illegitimate child, or who, in good faith, believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

Abduction.

362. Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

Punishment for kidnapping.

363. Whoever kidnaps any person from British India or from lawful guardianship shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Kidnapping or abducting in order to murder.

364. Whoever kidnaps or abducts any person in order that such person may be murdered, or may be so disposed of as to be put in danger of being murdered, shall be punished with transportation for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations.

(*a.*) A kidnaps Z from British India, intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.

(*b.*) A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this section.

Act XLV. of 1860.

Kidnapping or abducting with intent secretly and wrongfully to confine person.

365. Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Kidnapping or abducting a woman to compel her marriage, &c.

366. Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Kidnapping or abducting in order to subject a person to grievous hurt, slavery, &c.

367. Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to grievous hurt or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Wrongfully concealing or keeping in confinement a kidnapped person.

368. Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or keeps such person in confinement, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for wh ich he conceals or detains such person in confinement.

Kidnapping child under ten years with intent to steal from its person.

369. Whoever kidnaps or abducts any child under the age of ten years, with the intention of taking dishonestly any moveable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Buying or disposing of any person as a slave.

370. Whoever imports, exports, removes, buys, sells, or disposes of any person as a slave, or accepts, receives, or detains against his will, any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Habitual dealing in slaves.

371. Whoever habitually imports, exports, removes, buys, sells, traffics, or deals in slaves, shall be punished with transportation for life, or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Selling of any minor for purposes of prostitution, &c.

372. Whoever sells, lets to hire, or otherwise disposes of any minor under the age of sixteen years, with intent that such minor shall be employed or used for the purpose of prostitution or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Buying of any minor for purposes of prostitution, &c.

373. Whoever buys, hires, or otherwise obtains possession of, any minor under the age of sixteen years, with intent that such minor shall be employed or used for the purpose of prostitution or for any unlawful and immoral purpose, or knowing it to be

likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Act XLV. of 1860.

Unlawful compulsory labour.

374. Whoever unlawfully compels any person to labour against the will of that person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

OF RAPE.

Rape.

375. A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the following descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is, or believes herself to be, lawfully married.

Fifthly.—With or without her consent, when she is under twelve* years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under twelve* years of age, is not rape.

Punishment for rape.

376. Whoever commits rape shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

OF UNNATURAL OFFENCES.

Unnatural offences.

377. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

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* The word "twelve" has been substituted for the word "ten" by Act X. of 1891, s. 1.

Act XLV. of 1860.

CHAPTER XVI.

OF OFFENCES AGAINST PROPERTY.

Of Theft.

Theft.

378. Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking is said to commit theft.

Explanation 1.—A thing, so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.—A moving, effected by the same act which effects the severance, may be a theft.

Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving, or by separating it from any other thing, as well as by actually moving it.

Explanation 4.—A person, who by any means causes an animal to move, is said to move that animal, and to move every thing which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority, either express or implied.

Illustrations.

(*a.*) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession, without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

(*b.*) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(*c.*) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(*d.*) A, being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(*e.*) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith, and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(*f.*) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(*g.*) A finds a ring lying on the high road, not in the possession of any person. A, by taking it, commits no theft, though he may commit criminal misappropriation of property.

(*h.*) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place, and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(*i.*) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

(*j.*) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(*k.*) Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he had borrowed on the watch, he commits theft, though the watch is his own property, inasmuch as he takes it dishonestly.

(*l.*) A takes an article belonging to Z out of Z's possession, without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly. A has therefore committed theft.

(*m.*) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent, for the purpose merely of reading it, and with the intention of returning it. Here it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(*n.*) A asks charity from Z's wife. She gives A money, food, and clothes, which A knows to belong to Z, her husband. Here it is probable that A may conceive that Z's wife is authorized to give away alms. If this was A's impression, A has not committed theft.

(*o.*) A is the paramour of Z's wife. She gives A valuable property which A knows to belong to her husband, Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.

(*p.*) A, in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft.

Punishment for theft.

379. Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Theft in dwelling-house, &c.

380. Whoever commits theft in any building, tent, or vessel, which building, tent, or vessel, is used as a human dwelling, or for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Theft, by clerk or servant, of property in possession of master.

381. Whoever, being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Theft after preparation made for causing death or hurt, in order to the committing of the theft.

382. Whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations.

(*a.*) A commits theft on property in Z's possession; and, while committing this theft, he has a loaded pistol under his garment, having provided this pistol for the purpose of hurting Z in case Z should resist. A has committed the offence defined in this section.

(*b.*) A picks Z's pocket, having posted several of his companions near him, in order that they may restrain Z, if Z should perceive what is passing, and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

Act XLV. of 1860.

Of Extortion.

Extortion.

383. Whoever intentionally puts any person in fear of any injury to that person or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed, which may be converted into a valuable security, commits "extortion."

Illustrations.

(*a.*) A threatens to publish a defamatory libel concerning Z, unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(*b.*) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain moneys to A. Z signs and delivers the note. A has committed extortion.

(*c.*) A threatens to send club-men to plough up Z's field, unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(*d.*) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper, and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converte d into a valuable security, A has committed extortion.

Punishment for extortion.

384. Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Putting person in fear of injury in order to commit extortion.

385. Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Extortion by putting a person in fear of death or grievous hurt.

386. Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Putting person in fear of death or of grievous hurt, in order to commit extortion.

387. Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Extortion by threat of accusation of an offence punishable with death or transportation, &c.

388. Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed, or attempted to commit, any offence punishable with death, or with transportation for life, or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be one punishable under section 377 of this Code, may be punished with transportation for life.

389. Whoever, in order to the committing of extortion, puts, or attempts to put, any person in fear of an accusation against that person or any other, of having committed, or attempted to commit, an offence punishable with death or with transportation for life, or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be punishable under section 377 of this Code, may be punished with transportation for life.

Putting person in fear of accusation of offence, in order to commit extortion.

Of Robbery and Dacoity.

390. In all robbery there is either theft or extortion.

Robbery.

Theft is "robbery," if, in order to the committing of the theft, or in committing the theft, or in carrying away or, attempting to carry away, property obtained by the theft, the offender, for that end, voluntarily causes, or attempts to cause, to any person death, or hurt, or wrongful restraint, or fear of instant death, or of instant hurt, or of instant wrongful restraint.

When theft is robbery.

Extortion is "robbery," if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person, or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

When extortion is robbery.

Explanation.—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

Illustrations.

(*a.*) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes without Z's consent. Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(*b.*) A meets Z on the high road, shews a pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.

(*c.*) A meets Z and Z's child on the high road. A takes the child, and threatens to fling it down a precipice, unless Z delivers his purse. Z, in consequence, delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(*d.*) A obtains property from Z by saying: "Your child is in the hand of my gang, and will be put to death unless you send us ten thousand rupees." This is extortion, and punishable as such: but it is not robbery, unless Z is put in fear of the instant death of his child.

391. When five or more persons conjointly commit, or attempt to commit, a robbery, or where the whole number of persons conjointly committing, or attempting to commit, a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting, or aiding, is said to commit "dacoity."

Dacoity.

Act XLV. of 1860.

Punishment for robbery.

392. Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

Attempt to commit robbery.

393. Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Voluntarily causing hurt in committing robbery.

394. If any person, in committing, or in attempting to commit, robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing, or attempting to commit, such robbery, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Punishment for dacoity.

395. Whoever commits dacoity shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Dacoity with murder.

396. If any one of five or more persons who are conjointly committing dacoity commits murder in so committing dacoity, every one of those persons shall be punished with death, or transportation for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Robbery or dacoity, with attempt to cause death or grievous hurt.

397. If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

Attempt to commit robbery or dacoity when armed with deadly weapon.

398. If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

Making preparation to commit dacoity.

399. Whoever makes any preparation for committing dacoity shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Punishment for belonging to a gang of dacoits.

400. Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Punishment for belonging to a wandering gang of thieves.

401. Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Act XLV. of 1860.

402. Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Assembling for purpose of committing dacoity.

Of Criminal Misappropriation of Property.

403. Whoever dishonestly misappropriates or converts to his own use any moveable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonest misappropriation of property.

Illustrations.

(*a*.) A takes property belonging to Z out of Z's possession, in good faith believing, at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

(*b*.) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But, if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

(*c*.) A and B being joint-owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But if A sells the horse, and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

Explanation 1.—A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

Illustration.

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending at a future time to restore it to Z. A has committed an offence under this section.

Explanation 2.—A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner, and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means, or what a reasonable time, in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it: it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believes that the real owner cannot be found.

Illustrations.

(*a*.) A finds a rupee on the high road, not knowing to whom the rupee belongs. A picks up the rupee. Here A has not committed the offence defined in this section.

(*b.*) A finds a letter on the road, containing a bank-note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.

(*c.*) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person who has drawn the cheque appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.

(*d.*) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.

(*e.*) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.

(*f.*) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.

404. Whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and, if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years.

Dishonest misappropriation of property possessed by a deceased person at the time of his death.

Illustration.

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.

Of Criminal Breach of Trust.

405. Whoever, being in any manner entrusted with property or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property, in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust."

Criminal breach of trust.

Illustrations.

(*a.*) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(*b.*) A is a warehouse-keeper. Z, going on a journey, entrusts his furniture to A under a contract that it shall be returned on payment of a stipulated sum for warehouse-room. A dishonestly sells the goods. A has committed criminal breach of trust.

(*c.*) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z that all sums remitted by Z to A shall be invested by A according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions, and employs the money in his own business. A has committed criminal breach of trust.

(*d.*) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's

directions, and buys shares in the Bank of Bengal for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(*e.*) A, a revenue-officer, is entrusted with public money, and is either directed by law or bound by a contract, express or implied, with the Government to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(*f.*) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

Punishment for criminal breach of trust.

406. Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Criminal breach of trust by carrier, &c.

407. Whoever, being entrusted with property as a carrier, wharfinger, or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Criminal breach of trust by a clerk or servant.

408. Whoever, being a clerk or servant, or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Criminal breach of trust by public servant, or by banker, merchant, or agent.

409. Whoever, being in any manner entrusted with property, or with any dominion over property, in his capacity of a public servant, or in the way of his business as a banker, merchant, factor, broker, attorney, or agent, commits criminal breach of trust in respect of that property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Of the Receiving of Stolen Property.

Stolen property.

410. Property the possession whereof has been transferred by theft or by extortion, or by robbery, and property which has been criminally misappropriated, or in respect of which* criminal breach of trust has been committed, is designated as stolen property, "whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without British India."† But if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

Dishonestly receiving stolen property.

411. Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

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* The words, "the offence of," have been repealed by Act VIII. of 1882, s. 9.

† The words quoted have been inserted by Act VIII. of 1882, s. 9.

Act XLV. of 1860.

Dishonestly receiving property stolen in the commission of a dacoity.

412. Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person whom he knows or has reason to believe to belong, or to have belonged, to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Habitually dealing in stolen property.

413. Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Assisting in concealment of stolen property.

414. Whoever voluntarily assists in concealing or disposing of, or making away with, property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Of Cheating.

Cheating.

415. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes, or is likely to cause, damage or harm to that person in body, mind, reputation, or property, is said to "cheat."

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations.

(*a.*) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(*b.*) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that the article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(*c.*) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(*d.*) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(*e.*) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(*f.*) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him, and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

(*g.*) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo-plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats. But if A, at the time of obtaining the money, intends to deliver the indigo-plant, and afterwards breaks his contract, and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(*h.*) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(*i.*) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage-money from Z. A cheats.

Cheating by personation.

416. A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Explanation.—The offence is committed whether the individual personated is a real or imaginary person.

Illustrations.

(*a.*) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(*b.*) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

Punishment for cheating.

417. Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.

418. Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates he was bound, either by law or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for cheating by personation.

419. Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Cheating and dishonestly inducing a delivery of property.

420. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter, or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Of Fraudulent Deeds and Dispositions of property.

Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.

421. Whoever dishonestly or fraudulently removes, conceals, or delivers to any person, or transfers, or causes to be transferred, to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Act XLV. of 1860.

Dishonestly or fraudulently preventing debt being available for creditors.

422. Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonest or fraudulent execution of deed of transfer containing a false statement of consideration.

423. Whoever dishonestly or fraudulently signs, executes, or becomes a party to any deed or instrument which purports to transfer or subject to any charge, any property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonest or fraudulent removal or concealment of property.

424. Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Of Mischief.

Mischief.

425. Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief."

Explanation 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property whether it belongs to that person or not.

Explanation 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

Illustrations.

(*a.*) A voluntarily burns a valuable security belonging to Z, intending to cause wrongful loss to Z. A has committed mischief.

(*b.*) A introduces water into an ice-house belonging to Z, and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

(*c.*) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.

(*d.*) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt and of thus causing damage to Z. A has committed mischief.

(*e.*) A, having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the underwriters. A has committed mischief.

(*f.*) A causes a ship to be cast away, intending thereby to cause damage to Z, who has lent money on bottomry on the ship. A has committed mischief.

(*g*.) A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.

(*h*.) A causes cattle to enter upon a field belonging to Z, intending to cause, and knowing that he is likely to cause, damage to Z's crop. A has committed mischief.

426. Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Punishment for committing mischief.

427. Whoever commits mischief, and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Committing mischief, and thereby causing damage to the amount of fifty rupees.

428. Whoever commits mischief by killing, poisoning, maiming, or rendering useless, any animal or animals of the value of ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Mischief by killing or maiming any animal of the value of ten rupees.

429. Whoever commits mischief by killing, poisoning, maiming, or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow, or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by killing or maiming cattle, &c., or any animal of the value of fifty rupees.

430. Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings, or for animals which are property, or for cleanliness, or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by injury to works of irrigation or by wrongfully diverting water.

431. Whoever commits mischief by doing any act which renders, or which he knows to be likely to render, any public road, bridge, navigable river, or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by injury to public road, bridge, or river.

432. Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by causing inundation or obstruction to public drainage attended with damage.

433. Whoever commits mischief by destroying or moving any light-house or other light used as a sea-mark, or any sea-mark or buoy or other thing placed as a guide for navigators, or by any act which renders any such light-house, sea-mark, buoy, or other such thing as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Mischief by destroying or moving, or rendering less useful, a light-house or sea-mark.

Act XLV. of 1860.

434. Whoever commits mischief by destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark less useful as such shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Mischief by destroying or moving, &c., a land-mark fixed by public authority.

435. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards, "or (where the property is agricultural produce) ten rupees or upwards,"* shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Mischief by fire or explosive substance with intent to cause damage to amount of one hundred rupees.

436. Whoever commits mischief by fire or any explosive substance intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship, or as a human dwelling, or as a place for the custody of property, shall be punished with transportation for life, or with imprison ment of either description for a term which may extend to ten years, and shall also be liable to fine.

Mischief by fire or explosive substance with intent to destroy a house, &c.

437. Whoever commits mischief to any decked vessel, or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Mischief with intent to destroy or make unsafe a decked vessel or one of 20 tons burden.

438. Whoever commits, or attempts to commit, by fire or any explosive substance, such mischief as is described in the last preceding section, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Punishment for mischief described in section 437, committed by fire or explosive substance.

439. Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein, or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Punishment for intentionally running vessel aground or ashore with intent to commit theft, &c.

440. Whoever commits mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Mischief committed after preparation made for causing death or hurt.

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* The words quoted have been inserted by Act VIII. of 1883, s. 10.

Of Criminal Trespass.

Criminal trespass.

441. Whoever enters into or upon property in the possession of another with intent to commit an offence, or to intimidate, insult, or annoy any person, in possession of such property, or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult, or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass."

House-trespass.

442. Whoever commits criminal trespass by entering into or remaining in any building, tent, or vessel used as a human dwelling, or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass."

Explanation.—The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

Lurking house-trespass.

443. Whoever commits house-trespass, having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent, or vessel which is the subject of the trespass, is said to commit "lurking house-trespass."

Lurking house-trespass by night.

444. Whoever commits lurking house-trespass after sunset and before sunrise is said to commit "lurking house-trespass by night."

House-breaking.

445. A person is said to commit "house-breaking," who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or, having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say:—

First.—If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

Secondly.—If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

Thirdly.—If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass, by any means by which that passage was not intended by the occupier of the house to be opened.

Fourthly.—If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

Fifthly.—If he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault.

Sixthly.—If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

Explanation.—Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

Illustrations.

(*a.*) A commits house-trespass by making a hole through the wall of Z's house, and putting his hand through the aperture. This is house-breaking.

(*b.*) A commits house-trespass by creeping into a ship at a port-hole between decks. This is house-breaking.

(*c.*) A commits house-trespass by entering Z's house through a window. This is house-breaking.

(*d.*) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.

(*e.*) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.

(*f.*) A finds the key of Z's house-door which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.

(*g.*) Z is standing in his door-way. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.

(*h.*) Z, the door-keeper of Y, is standing in Y's door-way. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

House-breaking by night.

446. Whoever commits house-breaking after sunset and before sunrise is said to commit "house-breaking by night."

Punishment for criminal trespass.

447. Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Punishment for house-trespass.

448. Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

House-trespass in order to commit offence punishable with death.

449. Whoever commits house-trespass in order to the committing of any offence punishable with death, shall be punished with transportation for life, or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.

House-trespass in order to commit offence punishable with transportation for life.

450. Whoever commits house-trespass in order to the committing of any offence punishable with transportation for life, shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

House-trespass in order to the commission of an offence punishable with imprisonment.

451. Whoever commits house-trespass in order to the committing of any offence punished with imprisonment, shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.

House-trespass after preparation made for causing hurt to any person.

452. Whoever commits house-trespass, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or

of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Act XLV. of 1860.

453. Whoever commits lurking house-trespass or house-breaking, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Punishment for lurking house-trespass or house-breaking.

454. Whoever commits lurking house-trespass or house-breaking in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

Lurking house-trespass or house-breaking in order to commit offence punishable with imprisonment.

455. Whoever commits lurking house-trespass or house-breaking having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Lurking house-trespass or house-breaking after preparation for hurt.

456. Whoever commits lurking house-trespass by night, or house-breaking by night, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Punishment for lurking house-trespass or house-breaking by night.

457. Whoever commits lurking house-trespass by night or house-breaking by night in order to the committing of any offence punishable with imprisonment shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

Lurking house-trespass or house-breaking by night to commit offence punishable with imprisonment.

458. Whoever commits lurking house-trespass by night or house-breaking by night, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Lurking house-trespass or house-breaking by night after preparation made for causing hurt to any person.

459. Whoever, whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Grievous hurt caused whilst committing lurking house-trespass or house-breaking.

460. If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night shall be

All persons jointly concerned in house-breaking, &c., punishable where death or grievous hurt caused by one of them.

Act XLV. of 1860.

punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Dishonestly breaking open closed receptacle containing property.

461. Whoever dishonestly, or with intent to commit mischief, breaks open or unfastens any closed receptacle, which contains, or which he believes to contain, property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Punishment for same offence when committed by person entrusted with custody.

462. Whoever, being entrusted with any closed receptacle which contains, or which he believes to contain, property, without having authority to open the same, dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

CHAPTER XVIII.

OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS.

Forgery.

463. Whoever makes any false document or part of a document with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud, or that fraud may be committed, commits forgery.

Making a false document.

464. A person is said to make a false document—

First.—Who dishonestly or fraudulently makes, signs, seals, or executes a document, or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed, or executed by, or by the authority of, a person by whom or by whose authority, he knows that it was not made, signed, sealed, or executed, or at a time at which he knows that it was not made, signed, sealed, or executed ; or

Secondly.—Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration ; or

Thirdly.—Who dishonestly or fraudulently causes any person to sign, seal, execute, or alter a document, knowing that such person, by reason of unsoundness of mind or intoxication, cannot, or that by reason of deception practised upon him he does not, know the contents of the document or the nature of the alteration.

Illustrations.

(*a.*) A has a letter of credit upon B for Rs. 10,000 written by Z. A, in order to defraud B, adds a cipher to the 10,000, and makes the sum 1,00,000, intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

(*b.*) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B, and thereby of obtaining from B the purchase-money. A has committed forgery.

(*c.*) A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.

(*d.*) A leaves with B, his agent, a cheque on a banker signed by A, without inserting the sum payable, and authorizes B to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payments. B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. B commits forgery.

(*e.*) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker, and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.

(*f.*) Z's will contains these words, "I direct that all my remaining property be equally divided between A, B, and C." A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(*g.*) A endorses a Government promissory note, and makes it payable to Z or his order, by writing on the bill the words, "Pay to Z or his order," and signing the endorsement. B dishonestly erases the words, "Pay to Z or his order," and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(*h.*) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(*i.*) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z, and, by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

(*j.*) A writes a letter, and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property, A has committed forgery.

(*k.*) A, without B's authority, writes a letter, and signs it in B's name, certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery, inasmuch as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an expressed or implied contract for service.

Explanation 1.—A man's signature of his own name may amount to forgery.

Illustrations.

(*a.*) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.

(*b.*) A writes the word "accepted" on a piece of paper, and signs it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiate the bill as though it had been accepted by Z. A is guilty of forgery; and if B, knowing the fact, draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(*c.*) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable. Here A has committed forgery.

(*d.*) A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate, in collusion with Z, executes a lease of the estate to Z at a nominal rent and for a long period, and dates the lease six months prior to the seizure, with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.

(*e.*) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit, and with intent to defraud his creditors, and, in order to give a colour to the transaction writes a promissory note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first head of the definition.

Explanation 2.—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real

Act XLV. of 1860.

person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Illustration.

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

Punishment of forgery.

465. Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Forgery of record of Court or of public register.

466. Whoever forges a document purporting to be a record or proceeding of or in a Court of Justice, or a register of birth, baptism, marriage, or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power-of-attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Forgery of valuable security or will.

467. Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to the person to make or transfer any valuable security, or to receive the principal, interest, or dividends thereon, or to receive or deliver any money, moveable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any moveable property or valuable security, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Forgery for the purpose of cheating.

468. Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Forgery for the purpose of harming the reputation of any person.

469. Whoever commits forgery intending that the document forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

"A forged document."

470. A false document made wholly or in part by forgery is designated "a forged document."

Using as genuine a forged document.

471. Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document shall be punished in the same manner as if he had forged such document.

Making or possessing counterfeit seal, &c., with intent to commit a forgery punishable under section 467.

472. Whoever makes or counterfeits any seal, plate, or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under section 467 or with such intent has in his possession any such

seal, plate, or other instrument, knowing the same to be counterfeit, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Act XLV. of 1860.

473. Whoever makes or counterfeits any seal, plate, or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any section of this chapter other than section 467, or with such intent has in his possession any such seal, plate, or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Making or possessing counterfeit seal, &c., with intent to commit forgery punishable otherwise.

474. Whoever has in his possession any document knowing the same to be forged, and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document is one of the description mentioned in section 466, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and, if the document is one of the description mentioned in section 467, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Having possession of valuable security or will known to be forged with intent to use it as genuine.

475. Whoever counterfeits upon or in the substance of any material any device or mark used for the purpose of authenticating any document described in section 467, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Counterfeiting a device or mark used for authenticating documents described in section 467, or possessing counterfeit marked material.

476. Whoever counterfeits upon or in the substance of any material and device or mark used for the purpose of authenticating any document other than the documents described in section 467, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon, or in the substance of, which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Counterfeiting a device or mark used for authenticating documents other than those described in section 467, or possessing counterfeit marked material.

477. Whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels, destroys, or defaces, or attempts to cancel, destroy, or deface, or secretes or attempts to secrete, any document which is, or purports to be, a will, or an authority to adopt a son, or any valuable security, or com-

Fraudulent cancellation, destruction, &c., of a will.

Act XLV. of 1860.

mits mischief in respect to such document, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

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*Of Trade and Property-marks.**

Trade-mark.

478. A mark used for denoting that goods are the manufacture or merchandise of a particular person is called a trade-mark, and for the purposes of this Code the expression "trade-mark" includes any trade-mark which is registered in the register of trade-marks kept under the Patents, Designs, and Trade-marks Act,† 1883, and any trade-mark which, either with or without registration, is protected by law in any British possession or foreign State to which the provisions of the one hundred and third section of the Patents, Designs, and Trade-marks Act, 1883, are, under order in Council, for the time being applicable.

Property-mark.

479. A mark used for denoting that moveable property belongs to a particular person is called a property-mark.

Using a false trade-mark.

480. Whoever marks any goods, or any case, package, or other receptacle containing goods, or uses any case, package, or other receptacle with any mark thereon, in a manner reasonably calculated to cause it to be believed that the goods so marked, or any goods contained in any such receptacle so marked, are the manufacture or merchandise of a person whose manufacture or merchandise they are not, is said to use a false trade-mark.

Using a false property-mark.

481. Whoever marks any moveable property or goods, or any case, package, or other receptacle containing moveable property or goods, or uses any case, package, or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property-mark.

Punishment for using a false trade-mark or property-mark.

482. Whoever uses any false trade-mark or any false property-mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Counterfeiting a trade-mark or property-mark used by another.

483. Whoever counterfeits any trade-mark or property-mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Counterfeiting a mark used by a public servant.

484. Whoever counterfeits any property-mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a particular person, or at a particular time or place, or that the property is of a particular quality, or has passed through a particular office, or that it is entitled to any

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* This part of Ch. XVIII. (*i.e.*, ss. 478-489) has been substituted for the original by the Indian Merchandise Marks Act (IV. of 1889), s. 2.

† 46 & 47 Vic., c. 57.

exemption, or uses as genuine any such mark, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Making or possession of any instrument for counterfeiting a trade-mark or property-mark.

485. Whoever makes or has in his possession any die, plate, or other instrument for the purpose of counterfeiting a trade-mark or property-mark or has in his possession a trade-mark or property-mark for the purpose of denoting that any goods are the manufacture or merchandise of a person whose manufacture or merchandise they are not, or that they belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Selling goods marked with a counterfeit trade-mark or property-mark.

486. Whoever sells or exposes, or has in possession for sale or any purpose of trade or manufacture, any goods or things with a counterfeit trade-mark or property-mark affixed to, or impressed upon, the same, or to or upon any case, package, or other receptacle in which such goods are contained, shall, unless he proves—

(*a*) that, having taken all reasonable precautions against committing an offence against this section, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the mark, and

(*b*) that, on demand made by, or on behalf of, the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(*c*) that otherwise he had acted innocently,

be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Making a false mark upon any receptacle containing goods.

487. Whoever makes any false mark upon any case, package, or other receptacle containing goods, in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain, or that it does not contain goods which it does contain, or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof, shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for making use of any such false mark.

488. Whoever makes use of any such false mark in any manner prohibited by the last foregoing section shall, unless he proves that he acted without intent to defraud, be punished as if he had committed an offence against that section.

Tampering with property-mark with intent to cause injury.

489. Whoever removes, destroys, defaces, or adds to any property-mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with both.

Act XLV. of 1860.

CHAPTER XIX.

OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.

Breach of contract of service during a voyage or journey.

490. Whoever, being bound by a lawful contract to render his personal service in conveying or conducting any person or any property from one place to another place, or to act as servant to any person during a voyage or journey, or to guard any person or property during a voyage or journey, voluntarily omits so to do, except in the case of illness or ill-treatment, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

Illustrations.

(*a.*) A, a palanquin-bearer, being bound by legal contract to carry Z from one place to another, runs away in the middle of the stage. A has committed the offence defined in this section.

(*b.*) A, a cooly, being bound by lawful contract to carry Z's baggage from one place to another, runs away in the middle of the stage. A has committed the offence defined in this section.

(*c.*) A, a proprietor of bullocks, being bound by legal contract to convey goods on his bullocks from one place to another, illegally omits to do so. A has committed the offence defined in this section.

(*d.*) A, by unlawful means, compels B, a cooly, to carry his baggage. B, in the course of the journey, puts down the baggage and runs away. Here, as B was not lawfully bound to carry the baggage, he has not committed any offence.

Explanation.—It is not necessary to this offence that the contract should be made with the person for whom the service is to be performed. It is sufficient if the contract is legally made with any person, either expressly or impliedly, by the person who is to perform the service.

Illustration.

A contracts with a dâk company, to drive his carriage for a month. B employs the dâk company to convey him on a journey, and during the month, the company supplies B with a carriage which is driven by A. A, in the course of the journey, voluntarily leaves the carriage. Here, although A did not contract with B, A is guilty of an offence under this section.

Breach of contract to attend on and supply the wants of helpless persons.

491. Whoever, being bound by a lawful contract to attend on or to supply the wants of any person who, by reason of youth or of unsoundness of mind, or a disease or bodily weakness, is helpless or incapable of providing for his own safety, or of supplying his own wants, voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

Breach of contract to serve at distant place to which servant is conveyed at master's expense.

492. Whoever, being bound by lawful contract in writing to work for another person as an artificer, workman, or labourer, for a period not more than three years, at any place within British India, to which, by virtue of the contract, he has been, or is to be, conveyed at the expense of such other, voluntarily deserts the service of that other during the continuance of his contract, or without reasonable cause refuses to perform the service which he has contracted to perform, such service being reasonable and proper service, shall be punished with imprisonment of either description for a term not exceeding one

month, or with fine not exceeding double the amount of such expense, or with both, unless the employer has ill-treated him, or neglected to perform the contract on his part. Act XLV. of 1860.

CHAPTER XX.

OF OFFENCES RELATING TO MARRIAGE.

Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.

493. Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him, and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Illustrations.

(*a.*) The question is, whether A and B were married.

The fact that they were usually received and treated by their friends as husband and wife is relevant.

(*b.*) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family is relevant.

Marrying again during lifetime of husband or wife.

494. Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception.—This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time, provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts, so far as the same are within his or her knowledge.

Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.

495. Whoever commits the offence defined in the last preceding section, having concealed from the person with whom the subsequent marriage is contracted the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Marriage-ceremony fraudulently gone through without lawful marriage.

496. Whoever dishonestly or with a fraudulent intention goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Adultery.

497. Whoever has sexual intercourse with a person who is, and whom he knows or has reason to believe to be, the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of

Act XLV. of 1860.

either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

Enticing or taking away or detaining with a criminal intent a married woman.

498. Whoever takes or entices away any woman who is, and whom he knows, or has reason to believe to be, the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

CHAPTER XXI.

OF DEFAMATION.

Defamation.

499. Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person, intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative, or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation unless that imputation, directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations.

(*a.*) A says, "Z is an honest man; he never stole B's watch;" intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.

(*b.*) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

(*c.*) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

Imputation of truth which public good requires to be made or published.

First Exception.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good, is a question of fact.

Second Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no farther.

Public conduct of public servants.

Third Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question and respecting his character, so far as his character appears in that conduct, and no farther.

Conduct of any person touching any public question.

Illustration.

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such a meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Fourth Exception.—It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Publication of reports of proceedings of Courts.

Explanation.—A Justice of the Peace or other officer holding an inquiry in open Court preliminary to a trial in a Court of Justice is a Court within the meaning of the above section.

Fifth Exception.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness, or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no farther.

Merits of case decided in Court; or conduct of witnesses and others concerned.

Illustrations.

(*a.*) A says, "I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no farther.

(*b.*) But if A says, "I do not believe what Z asserted at that trial, because I know him to be a man without veracity," A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's conduct as a witness.

Sixth Exception.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author, so far as his character appears in such performance, and no farther.

Merits of public performance.

Explanation.—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations.

(*a.*) A person who publishes a book submits that book to the judgment of the public.

(*b.*) A person who makes a speech in public submits that speech to the judgment of the public.

Act XLV. of 1860.

(*c.*) An actor or singer who appears on a public stage submits his acting or singing to the judgment of the public.

(*d.*) A says of a book published by Z, "Z's book is foolish, Z must be a weak man; Z's book is indecent, Z must be a man of impure mind." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no farther.

(*e.*) But if A says, "I am not surprised that Z's book is foolish and indecent, for he is a weak man, and a libertine," A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Seventh Exception.—It is not defamation in a person, having over another any authority either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Censure passed in good faith by person having lawful authority over another.

Illustration.

A Judge censuring in good faith the conduct of a witness or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception.

Eighth Exception.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Accusation preferred in good faith to authorized person.

Illustration.

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father—A is within this exception.

Ninth Exception.—It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Imputation in good faith by person for protection of his interests.

Illustrations.

(*a.*) A, a shop-keeper, says to B, who manages his business, "Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within this exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(*b.*) A, a Magistrate, in making a report to his superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith and for the public good, A is within this exception.

Tenth Exception.—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

Caution intended for good of person to whom conveyed or for public good

500. Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Punishment for defamation.

501. Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Printing or engraving matter known to be defamatory.

502. Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Sale of printed or engraved substance containing defamatory matter.

CHAPTER XXII.

OF CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE.

503. Whoever threatens another with any injury to his person, reputation, or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Criminal intimidation.

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested is within this section.

Illustration.

A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

504. Whoever intentionally insults, and thereby gives provocation to, any person, intending or knowing it to be likely that such provocation will cause him to break the public peace or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Intentional insult with intent to provoke a breach of the peace.

505. Whoever circulates, or publishes any statement, rumour, or report, which he knows to be false, with intent to cause any officer, soldier, or sailor, in the army or navy of the Queen to mutiny, or with intent to cause fear or alarm to the public, and thereby to induce any person to commit an offence against the State or against the public tranquillity, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Circulating false report with intent to cause mutiny or an offence against the State, &c.

506. Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or transportation, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Punishment for criminal intimidation.

If threat be to cause death or grievous hurt, &c.

Act XLV. of 1860.

Criminal intimidation by an anonymous communication.

507. Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section.

Act caused by inducing a person to believe that he will be rendered an object of divine displeasure.

508. Whoever voluntarily causes or attempts to cause any person to do any thing which that person is not legally bound to do, or omit to do anything which he is legally entitled to do, by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Illustrations.

(*a*.) A sits dharna at Z's door with the intention of causing it to be believed that by so sitting he renders Z an object of divine displeasure. A has committed the offence defined in this section.

(*b*.) A threatens Z that, unless Z performs a certain act, A will kill one of A's own children under such circumstances that the killing would be believed to render Z an object of divine displeasure. A has committed the offence defined in this section.

Words or gesture intended to insult the modesty of a woman.

509. Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Misconduct in public by a drunken person.

510. Whoever, in a state of intoxication, appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten rupees, or with both.

CHAPTER XXIII.*

OF ATTEMPTS TO COMMIT OFFENCES.

511. Whoever attempts to commit an offence punishable by this Code with transportation or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with transportation or imprisonment of any description provided for the offence, for a term of transportation or imprisonment which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Punishment for attempting to commit offences punishable with transportation or imprisonment.

Illustrations.

(*a.*) A makes an attempt to steal some jewels by breaking open a box, and finds, after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section.

(*b.*) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.

ACT XLVII. OF 1860.

RECEIVED THE G.-G.'S ASSENT ON THE 6TH OCTOBER 1860.

An Act for giving to the Universities of Calcutta, Madras, and Bombay the power of conferring Degrees in addition to those mentioned in Acts II., XXII., and XXVII. of 1857.

WHEREAS it is expedient to give to the Universities of Calcutta, Madras, and Bombay, established under Acts II., XXII., and XXVII. of 1857, the power of conferring degrees other than the degrees in those Acts expressly provided for; It is enacted as follows:—

Preamble.

1. It shall be competent to the Chancellor, Vice-Chancellor, and Fellows of the Universities of Calcutta, Madras, or Bombay respectively, to confer such degrees, and to grant such diplomas or licenses in respect of degrees, as the said Chancellor, Vice-Chancellor, and Fellows of any such University, shall have appointed or shall appoint by any bye-laws or regulations made and passed or to be made or pass-

Power of Universities to confer degrees.

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* NOTE.—Ss. 13, 14, and 15, Act XXVII., 1870 (*to amend the Indian Penal Code*), enact as follows:—

13. [*Application of certain chapters of Penal Code.*]—The following chapters of the same Code, namely, IV. (*General Exceptions*), V. (*of Abetment*), and XXIII. (*of Attempts to Commit Offences*), shall apply to offences punishable under the said ss. 121A, 294A, and 304A; and the said Chapters IV. and V. shall apply to offences punishable under the said ss. 124A and 225A.

14. [*Sanction to prosecution under s. 121A, 124A, or 294A.*]—No charge of an offence punishable under any of the said ss. 121A, 124A, and 294A, shall be entertained by any Court unless the prosecution be instituted by order of, or under authority from, the Local Government.

15. [*Saving of special and local laws.*]—Nothing contained in this Act shall be taken to affect any of the provisions of any special or local law.

Act XLVIII. of 1860.

ed by them in the manner provided in the said Acts, and submitted to and approved by the Governor-General in Council as far as regards the University of Calcutta, or by the Governor in Council of Madras or Bombay as regards the Universities of Madras and Bombay respectively.

Construction.

2. All the provisions contained in the said Acts II., XXII., and XXVII. of 1857, with respect to the degrees therein mentioned, and to the examinations for those degrees, shall apply to any degrees which may be conferred under this Act and to the examinations for such degrees.

ACT XLVIII. OF 1860.

RECEIVED THE G.-G.'S ASSENT ON THE 26TH DECEMBER 1860.

An Act to Amend Act XIII. of 1856 (for regulating the police of the towns of Calcutta, Madras, and Bombay).

Preamble.

WHEREAS it is expedient to amend certain provisions of Act XIII. of 1856; It is enacted as follows :—

Additions to Act XIII. of 1856.

1. The following sections shall be read with and taken as part of the said Act XIII. of 1856.

Penalty on police-officers taking bribes.

2. Whoever, being a member of the police-force, or being employed in any police-office, asks for or takes any bribe or unauthorized reward, may be dismissed by order of the Commissioner, and, upon conviction before a Magistrate, shall be liable to a fine not exceeding five hundred rupees, or to imprisonment, with or without hard labour, for any term not exceeding six months.

Members of police not to resign without leave or notice.

3. No member of the police-force, to be enrolled under this Act, shall be at liberty to resign his office, or to withdraw himself from the duties thereof, unless expressly allowed so to do in writing by the Commissioner, or unless he shall have given to the Commissioner six months' notice of his intention if a member of the mounted branch of the said force, and two months' notice if a member of any other branch;

Penalty.

and every member of the said force, who shall so resign or withdraw himself without such leave or notice, shall be liable, on the order of the Commissioner, to forfeit all arrears of pay then due to him; and, on the sentence of a Magistrate, if such Magistrate shall think fit, to pay a fine not exceeding fifty rupees, or to imprisonment, with or without hard labour, for any term not exceeding two months

4, 5, 6. [*Repealed by Act IV. of 1877.*]

Penalty for assaulting police-man in execution of duty.

7. Whoever assaults or resists, or aids or incites any person to assault or resist, any police-officer in the execution of his duty, shall be liable to a fine not exceeding two hundred rupees, or to imprisonment, with or without hard labour, for any term not exceeding six months; ~~and~~ if the offender shall, at the time of committing the offence, be undergoing a former sentence of imprisonment, the imprisonment awarded under this section shall commence and take effect from and after the expiration of such former sentence.

8. [*Repealed by Act IV. of 1877.*]

9. Whoever, without satisfactory excuse, wilfully trespasses in or on any dwelling-house or premises, or any land or ground attached thereto, not thereby causing any actual damage, or on any ground belonging to Government, or appropriated to public purposes, shall be liable to a fine not exceeding twenty rupees.

Penalty for wilful trespass on property.

10. [*Repealed by Act IV. of 1877.*]

11. Whoever, in the town of Bombay, has or keeps any such hotel, tavern, shop, or place, or who sells by retail in any place any spirituous or fermented liquors without such license, shall be liable to a fine not exceeding fifty rupees for every day that such unlicensed house or place of any kind is kept open, or that such unlicensed sale is continued ;

Penalty for keeping tavern, &c., and for retailing spirit in any place without license.

provided that nothing in this section shall apply to the sale, in reasonable quantities, of any drug, plant, or substance in any druggist's or chemist's shop for medicinal purposes only.*

12. The Commissioner of Police shall, from time to time, grant licenses to the keepers of such houses or places of public resort and entertainment as aforesaid in the said towns, and upon such conditions, to be inserted in every such license, as he, with the sanction of the Local Government, from time to time, shall order, for securing the good behaviour of the keepers of the said houses or places of public resort and entertainment, and the prevention of drunkenness and disorder among the persons frequenting or using the same ;

Licenses by Commissioner of Police for keeping taverns and places of public entertainment.

and the said licenses may be granted by the said Commissioner for any term not exceeding one year :

provided always that it shall not be lawful for the said Commissioner to grant a license to open or establish, or keep open, any house of public entertainment in which any provisions, liquors, or refreshments of any kind, or in which any gánjá, chandu, or other preparation of opium, hemp, or other intoxicating drug, plant, or substance, may be sold or consumed, to any person who has not taken out a license for the retail-sale of such articles, if a license be necessary, under the ábkári or excise laws for the time being in force ; and any such license granted by the Commissioner shall become void whenever the license necessary under the ábkári or excise laws shall terminate or be recalled.

Licenses to be granted only to persons who have taken out ábkári licenses.

And every holder of such license may be required by the Commissioner to fix, in a conspicuous part of the house or place specified in the license, a board, on which shall be legibly painted, in the English and vernacular languages, the name of the holder, and the articles he is licensed to deal in.

For every license granted under this section there shall be levied a fee of one rupee. But such fee shall not interfere with the levy of any fee, tax, or duty on licenses to retail spirituous liquors in the Islands of Bombay and Kolábá chargeable under Act V. of 1842.*

Fees on licenses.

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* So much of ss. 11, 12, 13, as relates to the sale of spirituous and fermented liquors in the city of Bombay, was repealed by Bombay Act IX. of 1867.

Act XLVIII. of 1860.

Forfeiture of license and fine on breach of condition of license.

13. A breach of any of the conditions of a license granted under the last preceding section shall, besides forfeiture of the license, be punishable by a fine not exceeding one hundred rupees, and such fine shall be recovered from the person licensed, notwithstanding that such breach may have been owing to the default or carelessness of the servant or other person in charge of the shop or place of sale.*

Brothels.

14. On proof to the satisfaction of the Commissioner of Police or of a Magistrate that a house is used as a common brothel, or lodging-house for prostitutes or disorderly persons of any description, to the annoyance of the respectable inhabitants of the vicinity, such Commissioner or Magistrate may summon the owner or tenant of the house to answer the complaint, and, on being satisfied that the house is so used, and is therefore a source of annoyance and offence to the neighbours, may order the owner or tenant to discontinue such use of it, and, if he shall fail to comply with such order within five days, may impose upon him a fine to the extent of twenty-five rupees for every day thereafter that the house shall be so used.

Common gaming-houses.

15. When any cards, dice, gaming-table, or cloth, board, or other instruments of gaming, are found in any house, room, or place, if information has been given on oath to the Commissioner of Police that it is suspected of being used as a common gaming-house, or about the person of any of those who are found therein, it shall be evidence, until the contrary is made to appear, that such house, room, or place is used as a common gaming-house, and that the persons found therein were there present for the purpose of gaming, although no play was actually seen by the police-officer or any of his assistants.

Taking pledge from child under age of fourteen.

16. Whoever takes from any child, apparently under the age of fourteen years, any article whatsoever as a pawn, pledge, or security for any sum of money lent or advanced to such child, or, without the knowledge and consent of the owner of the article, buys from such child any article whatsoever, shall be liable to a penalty not exceeding one hundred rupees.

Penalty for using false weights and measures.

17. Whoever, dealing in any articles by retail, has, in or about his shop or premises, or otherwise in his possession, without lawful or satisfactory excuse, any false instrument for weighing, or any false weight, or false measure of length or capacity, shall be liable to a fine not exceeding fifty rupees, or to imprisonment, with or without hard labour, for a term not exceeding one month ; and every such false instrument, weight, or measure shall be forfeited and destroyed.

Weights and measures held to be false.

Weights and measures shall be held to be false when they do not agree with standards to be kept in the office of the Commissioner of Police, and in Bombay when they do not agree with the standards to be kept in the offices of the Commissioner of Police and of the clerk of the markets.

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* So much of ss. 11, 12, 13, as relates to the sale of spirituous and fermented liquors in the city of Bombay, was repealed by Bombay Act IX. of 1867.

Act XLVIII. of 1860.

Powers of police to enter shops to seize false weights and measures.

18. Any inspector or superior officer of police may enter any shop or premises for the purpose of inspecting the weights and measures and instruments for weighing kept or used therein, and may seize any weight, measure, or instrument for weighing which he may have reason to believe is false.

The power granted by this section may, in Bombay, be exercised by the clerk of the markets.

Penalty for following offences in public streets, &c.

19. Whoever, within such limits as shall be from time to time defined by the Commissioner of Police, with the sanction of the Local Government, in any public street, road, thoroughfare, or place of public resort, commits any of the following offences, shall be liable to a fine not exceeding fifty rupees:—

Furious or negligent driving or riding.

(1) whoever drives or rides any animal, or drives any vehicle, in a manner so rash or negligent as to indicate a want of due regard for the safety of others;

Driving, &c., elephant or camel.

(2) whoever drives, rides, or leads any elephant or camel without permission from the Commissioner of Police;

Driving vehicle without sufficient light.

(3) whoever drives any vehicle of any description, at any time between three quarters of an hour after sunset, and one hour before sunrise, without a sufficient light, except when, in the opinion of the Magistrate, there may be sufficient moonlight to render such light unnecessary;

Driving vehicle otherwise than on left side of road.

(4) whoever, without reasonable cause, shall drive a carriage, cart, or other vehicle otherwise than on the left or near side of the road;

Exposing for show or training horses, or cleaning or repairing conveyances in places not allowed by Commissioner.

(5) whoever exposes for show, hire, or sale, any horse or other animal, or any carriage, or cleans or dresses any horse or other animal, or cleans any carriage or other conveyance, or makes or repairs any part of any cart or carriage, except in cases of accident where repair on the spot is necessary; or trains or breaks any horse, except in such place and at such times as may be allowed by the Commissioner;

Letting loose horses, ferocious dogs, &c.

(6) whoever negligently lets loose any horse, or suffers to be at large any ferocious dog without a muzzle, or sets on or urges any dog or other animal to attack, worry, or put in fear any person, horse, or other animal;

Negligence in driving cattle.

(7) whoever, by negligence or ill-usage in driving cattle, causes any mischief to be done by such cattle, or in anywise misbehaves himself in the driving, management, or care of such cattle, so as to cause mischief or obstruction;

Leaving cart, &c., without control.

(8) whoever, being in charge of a cart, carriage, or horse leaves it at such a distance as not to have the same under due control;

Obstructing road or thoroughfare by carriage, &c.

(9) whoever causes any cart or truck, with or without horses or cattle, to remain or stand longer than may be necessary for loading or unloading, except at places lawfully appointed for the purpose, or leaves any cart, carriage, or truck, or fastens any horse or other animal, so as to cause any obstruction in any thoroughfare;

Act XLVIII. of 1860.

Obstructing foot-way.

(10) whoever leads or rides any horse or other animal, or draws or drives any cart, carriage, or truck upon any foot-way, or fastens any horse or animal so that it can stand across or upon any foot-way;

Obstructing thoroughfare by boxes, bales of goods, &c.

(11) whoever leaves any box, bale of goods, or any other thing whatsoever so as to cause obstruction in any thoroughfare;

Exposing articles for sale so as to cause obstruction.

(12) whoever exposes for sale, or sets out in or upon any stall, booth, show board, cask, or basket, or otherwise, any meat, fish, vegetable, fruit, groceries, or any other thing whatsoever, so as to cause obstruction in any thoroughfare;

Beating drums, tom-tom, &c.

(13) whoever beats a drum or tom-tom, or blows a horn or trumpet, or beats or sounds any brass or other metal instrument or utensil, except at such times and places as shall be from time to time allowed by the Commissioner of Police;

Lighting fires and discharging guns, fire-works, &c.

(14) whoever sets fire to or burns any straw or other matter, or lights any bonfire, or wantonly discharges any fire-arm or air-gun, or lets off or throws any fire-work, or sends up any fire-balloon, in or near any public street, road, or thoroughfare, except at such times and places as shall from time to time be allowed by the Commissioner of Police;

Illuminations.

(15) whoever, without the consent of the Commissioner of Police, puts up any post or other thing on the side of any public street, for the purpose of affixing thereon lamps to illuminate the street;

Affixing bills, or otherwise defacing houses, &c.

(16) whoever, without the consent of the owner or occupier, affixes any bill or notice, or any paper, against or upon any building, wall, or fence, or writes upon, defaces, or marks any such building, wall, or fence with chalk or paint, or in any way whatsoever;

Bathing, &c., in public street or aqueduct.

(17) whoever bathes or washes himself in any public street, or in, upon, or by the side of, any public tank, reservoir or aqueduct, not being a place set apart for such purpose;

Obstructing persons at bathing-places.

(18) whoever obstructs or incommodes a person bathing at any place set apart as a bathing-place, by wilful intrusion, or by using such place as a landing-place, or by anchoring or otherwise fastening or keeping boats, or by washing horses, cattle, or dogs at or near such place, or in any other way;

Indecent language.

(19) whoever uses any indecent, threatening, abusive, or insulting words, or behaves in a threatening or insulting manner, or posts up or affixes, or exhibits, any indecent, threatening, abusive, or insulting printed, lithographed, or written paper or drawing with the intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned.

Commissioner of Police in Bombay to make rules for blasting of rocks.

20. The Commissioner of Police in Bombay shall, from time to time subject to the orders of the Local Government, make and publish in the Government Gazette, rules for the blasting of rocks in or near any public road, street, thoroughfare, or place in the Islands of Bombay and Kolábá, and may give licenses for such operations when he shall think fit; and every person who shall blast any such rocks otherwise than according to the provisions of such rules

or who shall violate any condition of a license granted under this section, shall be liable to a fine not exceeding one hundred rupees. Act XLVIII. of 1860.

Cruelty to animals.

21. Whoever cruelly beats, ill-treats, abuses, or tortures, or causes or procures to be cruelly beaten, ill-treated, abused, or tortured, any animal, shall, for every such offence, be liable to a fine not exceeding one hundred rupees, and in default thereof to imprisonment, with or without hard labour, for a period not exceeding three months.

Penalty for drunkenness, or riotous or indecent behaviour in public.

22. Whoever is found drunk and incapable of taking care of himself, or is guilty of any riotous, disorderly, or indecent behaviour in any street or thoroughfare, or in any place of public amusement or resort; and whoever is guilty of any violent, disorderly, or indecent behaviour in any police-court, office, station, or section-house, shall be liable to a fine not exceeding twenty rupees, or to imprisonment, with or without hard labour, for a term not exceeding fourteen days.

23. [*Repealed by Bengal Act IV. of 1866.*]

24, 25, 26. [*Repealed by Act IV. of 1877.*]

Punishment for non-attendance on summons or subpœna.

27. When any person shall be served with a summons or subpœna under this Act, and shall fail to attend before the Commissioner *or Magistrate* issuing such summons or subpœna, according to the exigency thereof, he shall be liable to a fine not exceeding twenty rupees for every such offence, and, in default of payment, to imprisonment for one week, if the fine be not sooner paid.

Stray animals to be impounded and sold unless redeemed within ten days

28. It shall be lawful for all persons, and it is hereby declared to be the special duty of all police-officers, to seize all cattle or other animals found straying upon the roads, streets, or thoroughfares, or trespassing on any of the grounds or property of the inhabitants or of the Government, and to confine such animals in any public pound which shall, for such purpose, be, from time to time, appointed by the Commissioner of Police; and if such animals shall not be respectively redeemed by the owners of the same within ten days after being so pounded, by paying to the person to be appointed by the said Commissioner to have charge of such pound, the fee of eight annas for every goat, sheep, or hog, and one rupee for every other animal, together with the expenses of feeding the same while impounded, according to a daily rate to be settled by the said Commissioner, such animals so impounded shall be publicly sold, and the produce of such sale, after paying the said fee, and also the expenses of feeding, shall be paid to the owners of such animal, or, in default of their claiming such produce for the space of fifteen days after such sale, shall be retained by the said Commissioner, and credited to the Police Superannuation Fund.

Limitation of action.

Notice of action.

29. *First.*—All actions and prosecutions against any person, which may be lawfully brought for anything done, or intended to be done, under the provisions of this Act, shall be commenced within three months after the act complained of shall have been committed, and not otherwise; and notice in writing of such action, and of the cause thereof, shall be given to the defendant one month at least before the commencement of the action; and in every such action it shall be expressly alleged in the plaint that

Act V. of 1861.

the act complained of was done maliciously and without reasonable or probable cause, and if, at the trial of any such action, upon the general issue being pleaded as hereinafter provided, the plaintiff shall fail to prove such allegation, he shall be non-suited, and a verdict shall be given for the defendant.

Second.—The defendant in any such action may plead the general issue and give this Act and the special matter in evidence at any trial to be had thereupon; and no plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action brought, by or on behalf of the defendant; and if a verdict shall pass for the defendant, or the plaintiff shall become nonsuit, or discontinue any such action after issue joined, or if, upon demurrer or otherwise, judgment shall be given against the plaintiff, the defendant shall recover his full costs as between attorney and client, and have the like remedy for the same, as any defendant hath by law in other cases; and though a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the Judge, before whom the trial shall be, shall certify his approbation of the action, and of the verdict obtained thereupon.

Plea.

Tender of amends.

Costs.

ACT V. OF 1861.*

RECEIVED THE G.-G.'S ASSENT ON THE 22ND MARCH 1861.

An Act for the Regulation of Police.

WHEREAS it is expedient to re-organize the Police, and to make it a more efficient instrument for the prevention and detection of crime; It is enacted as follows :—

Preamble.

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* Act V. of 1861 has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886.

Ben. Act VII. of 1869 is to be read and taken in the provinces under the control of the Lieutenant-Governor of Bengal as part of this Act.—See Ben. Act VII. of 1869, s. 6.

For further provisions for the maintenance of discipline among the Frontier Police of the Hill Tracts of Chittagong and the Frontier Police-officers of Assam enrolled under Act V. of 1861, see Regs. III. of 1881 and II. of 1882. For provisions as to maintenance of discipline among the Frontier Police of Burma, see Upper Burma Military Police Regulation, 1887.

As to the application of Act V. of 1861 in Lower Burma Municipalities to which Act XVII. of 1884 does not apply, see Act VII. of 1874, s. 33; in Municipalities in the North-Western Provinces and Oudh, see Act XV. of 1883, ss. 50 and 52; and in Municipalities in the Punjab, see Act XIII. of 1884, ss. 74 to 77.

The Act has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum . . . . . See *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504.

Ss. 10, 12, 23, 24, 26, 27, 29, 31, and 34, have been extended, under the same Act, to the Scheduled District of Coorg.—See *Gazette of India*, Feb. 8, 1879, Pt. I., p. 96.

1. The following words and expressions in this Act shall have the meaning assigned to them, unless there be something in the subject or context repugnant to such construction, that is to say :—

Interpretation-clause.

The words "Magistrate of the district" shall mean the chief officer charged with the executive administration of a district, and exercising the powers of a Magistrate, by whatever designation the chief officer charged with such executive administration is styled :

The word "Magistrate" shall include all persons, within the general police-district, exercising all or any of the powers of a Magistrate :

The word "police" shall include all persons who shall be enrolled under this Act :

The words "general police-district" shall embrace any presidency, province, or place, or any part of any presidency, province, or place, in which this Act shall be ordered to take effect :

The word "property" shall include any moveable property, money, or valuable security :

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number :

Words importing the masculine gender shall include females :

The word "person" shall include a Company or Corporation :

The word "month" shall mean a calendar month :

The word "cattle" shall, besides horned cattle, include elephants, camels, horses, asses, mules, sheep, goats, and swine.

2.* The entire police establishment under a Local Government shall, for the purposes of this Act, be deemed to be one police-force, and shall be formally enrolled ; and shall consist of such number of officers and men, and shall be constituted in such manner, and the members of such force shall receive such pay, as shall, from time to time, be ordered by the Local Government, subject to the sanction of the Governor-General of India in Council.†

Constitution of the force.

3. The superintendence of the police throughout a general police-district shall vest in, and, subject to the general control of the Governor-General of India in Council, shall be exercised by, the Local Government‡ to which such district is subordinate ; and, except as authorized under the provisions of this Act, no person, officer, or Court, shall be empowered by the Local Government to appoint, supersede, or control any police-functionary.

Superintendence in the Local Government.

4. The administration of the police throughout a general police-district shall be vested in an officer to be styled the Inspector-General of Police, and in such Deputy Inspectors-General and Assistant Inspectors-General as to the Local Government shall seem fit.

Inspector-General of Police, &c.

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* S. 2, so far as it relates to the provinces under the control of the Lieutenant-Governor of Bengal, has been repealed by Ben. Act VII. of 1869.

† S. 2.—In Upper Burma, the following words are to be added to s. 2 : "All Thugyis and Myothugyis for the time being holding office shall be police-officers, and shall be deemed to have been formally enrolled under this Act."—See Act XX. of 1886, s. 7 (*1*) (*b*).

‡ The powers of a Local Government under this Act (except s. 4) have been delegated (under Act XXXII. of 1867) to the Chief Commissioners of Oudh, the Central Provinces, and British Burma.—See *Gazette of India*, Mar. 7, 1868, p. 358 ; *ib.*, June 12, 1869, p. 18.

Act V. of 1861.

The administration of the police throughout the local jurisdiction of the Magistrate of the district shall, under the general control and direction of such Magistrate, be vested in a District Superintendent and such Assistant District Superintendents as the Local Government shall consider necessary.

The Inspector-General and other officers above mentioned shall, from time to time, be appointed by the Local Government, and may be removed by the same authority.

Powers of Inspector-General.

Exercise of powers.

5. The Inspector-General of Police shall have the full powers of a Magistrate throughout the general police-district; but shall exercise those powers subject to such limitation as may, from time to time, be imposed by the Local Government.

6. [*Repealed by Act X. of 1882.*]

Appointment, dismissal, &c., of inferior officers.

7. The appointment of all police-officers other than those mentioned in section 4 of this Act shall, under such rules as the Local Government shall, from time to time, sanction, rest with the Inspector-General, Deputy Inspectors-General, Assistant-Inspectors-General, and District Superintendents of Police, who may, under such rules as aforesaid, at any time dismiss, suspend, or reduce any police-officer whom they shall think remiss or negligent in the discharge of his duty or unfit for the same, or fine any police-officer to any amount not exceeding one month's pay who shall discharge his duty in a careless or negligent manner, or who, by any act of his own, shall render himself unfit for the discharge thereof.

Certificates to police-officers.

8. Every police-officer so appointed shall receive, on his appointment, a certificate in the form annexed to this Act under the seal of the Inspector-General or such other officer as the Inspector-General shall appoint, by virtue of which the person holding such certificate shall be vested with the powers, functions, and privileges of a police-officer.

Surrender of certificate.

Such certificate shall cease to have effect whenever the person named in it is suspended,* or dismissed, or otherwise removed from employment in the police-force, and shall be immediately surrendered to the superior officer of such person or to some other officer empowered to receive the same.

Police-officers not to resign without leave or two months' notice.

9. No police-officer shall be at liberty to withdraw himself from the duties of his office unless expressly allowed to do so by the District Superintendent or by some other officer authorized to grant such permission, or, without the leave of the District Superintendent, to resign his office, unless he shall have given to his superior officer notice in writing, for a period of not less than two months, of his intention to resign.

Police-officers not to engage in other employment.

10. No police-officer shall engage in any employment or office whatever, other than his duties under this Act, unless expressly permitted to do so in writing by the Inspector-General.

11. [*Repealed by Act XVI. of 1874.*]

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* *Reg.* v. *Dinanath Gangooly*, 8 Ben., Ap., 59.

Power of Inspector-General to make rules.

12. The Inspector-General of Police may, from time to time subject to the approval of the Local Government, frame such orders and rules as he shall deem expedient, relative to the organization, classification, and distribution of the police-force; the places at which the members of the force shall reside, and the particular services to be performed by them; their inspection, the description of arms, accoutrements, and other necessaries to be furnished to them; the collecting and communicating by them of intelligence and information; and all such other orders and rules relative to the police-force as the Inspector-General shall, from time to time, deem expedient for preventing abuse or neglect of duty, and for rendering such force efficient in the discharge of its duties.

Additional police-officer employed at cost of individuals.

13. It shall be lawful for the Inspector-General of Police, or any Deputy Inspector-General or Assistant Inspector-General, or for the District Superintendent, subject to the general direction of the Magistrate of the district, on the application of any person showing the necessity thereof, to depute any additional number of police-officers to keep the peace at any place within the general police-district, and for such time as shall be deemed proper. Such force shall be exclusively under the orders of the District Superintendent, and shall be at the charge of the person making the application. Provided that it shall be lawful for the person, on whose application such deputation shall have been made, on giving one month's notice in writing to the Inspector-General, Deputy Inspector-General, or Assistant Inspector-General, or to the District Superintendent to require that the police-officers so deputed shall be withdrawn; and such person shall be relieved from the charge of such additional force from the expiration of such notice.

Appointment of additional force in the neighbourhood of railway and other works.

14. Whenever any railway, canal, or other public work, or any manufactory or commercial concern, shall be carried on or be in operation, in any part of the country, and it shall appear to the Inspector-General that the employment of an additional police-force in such place is rendered necessary by the behaviour or reasonable apprehension of the behaviour of the persons employed upon such work, manufactory, or concern, it shall be lawful for the Inspector-General, with the consent of the Local Government, to depute such additional force to such place and to employ the same so long as such necessity shall continue, and to make orders from time to time upon the person having the control or custody of the funds used in carrying on such work, manufactory, or concern, for the payment of the extra force so rendered necessary, and such person shall thereupon cause payment to be made accordingly.

Quartering of additional police in disturbed or dangerous districts.

15. It shall be lawful for the Inspector-General of Police, with the sanction of the Local Government, to be notified by proclamation in the Government Gazette, and in such other manner as the Local Government shall direct, to employ any police-force in excess of the ordinary fixed complement to be quartered in any part of the general police-district which shall be found to be in a disturbed or dangerous state, or in any part of the general police-district in which, from the conduct of the inhabitants, he may deem it expedient to increase the number of police. The inhabitants of the part of the country described in the notification shall be charged with the cost of such additional police-force, and the Magistrate of the district, after enquiry if necessary, shall assess the proportion in which the amount is to be paid by the inhabitants according to his judgment of their respective means.

Act V. of 1861.

Payment of money for support of additional police-force.

16. All moneys payable under the last three preceding sections, on account of any additional police-force employed as therein directed, shall be recoverable under the warrant of a Magistrate by distress and sale of the goods of the defaulter within the district of such Magistrate, or by suit in any competent Court; and the moneys paid on this account or so recovered shall be credited to a fund to be called "The General Police Fund," and shall be applied to the maintenance of the police-force under such orders as the Local Government shall pass.

Special police-officers.

17. When it shall appear that any unlawful assembly, or riot, or disturbance of the peace, has taken place or may be reasonably apprehended, and that the police-force ordinarily employed for preserving the peace is not sufficient for its preservation, and for the protection of the inhabitants, and the security of property in the place where such unlawful assembly, or riot, or disturbance of the peace, has occurred, or is apprehended, it shall be lawful for any police-officer not below the rank of inspector to apply to the nearest Magistrate to appoint so many of the residents of the neighbourhood as such police-officer may require to act as special police-officers for such time and within such limits as he shall deem necessary; and the Magistrate to whom such application is made shall, unless he see cause to the contrary, comply with the application.

Powers of special police-officers.

18. Every special police-officer so appointed shall have the same powers, privileges, and protection, and shall be liable to perform the same duties, and shall be amenable to the same penalties, and be subordinate to the same authorities as the ordinary officers of police.

Refusal to serve as special police-officers.

19. If any person, being appointed a special police-officer as aforesaid, shall, without sufficient excuse, neglect or refuse to serve as such, or to obey such lawful order or direction as may be given to him for the performance of his duties, he shall be liable, upon conviction before a Magistrate, to a fine not exceeding fifty rupees for every such neglect, refusal, or disobedience.

Authority to be exercised by police-officers.

20.* Police-officers enrolled under this Act shall not exercise any authority, except the authority provided for a police-officer under this Act and any Act which shall hereafter be passed for regulating criminal procedure.†

Village-police-officer.

21. Nothing in this Act shall affect any hereditary or other village-police-officer, unless such officer shall be enrolled as a police-officer under this Act. When so enrolled, such officer shall be bound by the provisions of the last preceding section. No hereditary or other village-police-officer shall be enrolled without his consent and the consent of those who have the right of nomination.

Police-chaukidars in the Presidency of Fort William.

If any police-officer appointed under Act XX. of 1856 (*to make better provision for the appointment and maintenance of Police-chaukidars in Cities, Towns, Stations, Suburbs, and Bazars in the Presidency of Fort William in Bengal*) is employed out of the district for which he shall have been appointed under that Act, he shall not be paid out of the rates levied under the said Act for that district.

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* In Assam, s. 20 applies only to police-officers below the grade of Assistant District Superintendent.—See Reg. II. of 1883, s. 3.

† See now Act X. of 1882.

22. Every police-officer shall, for all purposes in this Act contained, be considered to be always on duty, and may at any time be employed as a police-officer in any part of the general police-district.

Police-officers always on duty, and may be employed in any part of district.

23. It shall be the duty of every police-officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority; to collect and communicate intelligence* affecting the public peace; to prevent the commission of offences and public nuisances; to detect and bring offenders to justice, and to apprehend all persons whom he is legally authorized to apprehend, and for whose apprehension sufficient ground exists: and it shall be lawful for every police-officers, for any of the purposes mentioned in this section, without a warrant, to enter and inspect any drinking-shop, gaming-house, or other place of resort of loose and disorderly characters.

Duties of police-officers.

24. It shall be lawful for any police-officer to lay any information before a Magistrate, and to apply for a summons, warrant, search-warrant, or such other legal process as may by law issue against any person committing an offence.†

Police-officers may lay information, &c.

25. It shall be the duty of every police-officer to take charge of all unclaimed property, and to furnish an inventory thereof to the Magistrate of the district.

Police-officers to take charge of unclaimed property, and be subject to magistrate's orders as to disposal.

The police-officers shall be guided as to the disposal of such property by such orders as they shall receive from the Magistrate of the district.

26. The Magistrate of the district may detain the property, and issue a proclamation, specifying the articles of which it consists, and requiring any person who has any claim thereto to appear and establish his right to the same within six months from the date of such proclamation.

Magistrate may detain property, and issue proclamation.

27. If no person shall, within the period allowed, claim such property, it may be sold under the orders of the Magistrate of the district, and the proceeds shall be at the disposal of Government.

Confiscation of property if no claimant appear.

28. Every person having ceased to be an enrolled police-officer under this Act who shall not forthwith deliver up his certificate, and the clothing, accoutrements, appointments, and other necessaries which shall have been supplied to him for the execution of his duty, shall be liable, on conviction before a Magistrate, to a penalty not exceeding two hundred rupees, or to imprisonment, with or without hard labour, for a period not exceeding six months, or to both.

Persons refusing to deliver up certificate, &c., on ceasing to be police-officers.

29. Every police-officer‡ who shall be guilty of any violation of duty, or wilful breach or neglect of any rule or regulation or lawful order made by competent authority; or who shall withdraw from the duties of his office without permission, or without having given previous notice for the period of two months; or who shall engage,

Penalties for neglect of duty, &c.

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* See Act XLV. of 1860, s. 177. † See Act X. of 1882, Sch. I.

‡ See 8 Ben., App., 58; 3 N.-W. P. 128.

Act V. of 1861.

without authority, in any employment other than his police-duty ; or who shall be guilty of cowardice ; or who shall offer any unwarrantable personal violence to any person in his custody, shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay, or to imprisonment, with or without hard labour, for a period not exceeding three months, or to both.

Regulation of public processions, &c.

30. The District Superintendent and Assistant District Superintendent of Police may, as occasion requires, direct the conduct of all assemblies and processions on the public roads, or in the public streets or thoroughfares, and prescribe the routes by which, and the times at which, such processions may pass.

Music in the streets.

They may also regulate the use of music in the streets on the occasion of festivals and ceremonies.

Police to keep order in public roads, &c.

31. It shall be the duty of the police to keep order on the public roads and in the public streets, thoroughfares, ghats, and landing places, and at all other places of public resort, and to prevent obstructions on the occasions of assemblies and processions on the public roads and in the public streets, or in the neighbourhood of places of worship during the time of public worship, and in any case when any road, street, thoroughfare, ghat, or landing-place, may be thronged, or may be liable to be obstructed.

Penalty for disobeying orders issued under last two sections, &c.

32. Every person opposing or not obeying the orders issued under the last two preceding sections, or violating the conditions of any license granted by the District Superintendent or Assistant District Superintendent of Police for the use of music, or for the conduct of assemblies and processions, shall be liable, on conviction before a Magistrate, to a fine not exceeding two hundred rupees.

Saving of control of Magistrate of district

33. Nothing in the last three preceding sections shall be deemed to interfere with the general control of the Magistrate of the district over the matters referred to therein.

Punishment for certain offences on roads, &c.

34. Any person who, on any road or in any street or thoroughfare within the limits of any town to which this section shall be specially extended by the Local Government, commits any of the following offences* to the obstruction, inconvenience, annoyance, risk, danger, or damage of the residents and passengers, shall, on conviction before a Magistrate, be liable to a fine† not exceeding fifty rupees, or to imprisonment not exceeding eight days ; and it shall be lawful for any police-officer to take into custody, without a warrant, any person who, within his view, commits any of such offences, namely :—

Power of police-officers.

Slaughtering cattle, furious riding, &c.

First.—Any person who slaughters any cattle or cleans any carcass; any person who rides or drives any cattle recklessly or furiously, or trains or breaks any horse or other cattle :

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* Municipal committees in the Central Provinces are empowered to makes rules for declaring what acts or omissions within town-limits shall be considered to be public or common nuisances under Act V. of 1861.—See Act XI. of 1873, s. 14, cl. *a*.

† Fines levied in Municipalities under this section are to be credited to Municipal funds.—See as to Lower Burma, Act XVII. of 1884, s. 60, cl. *b*; as to the North-Western Provinces and Oudh, Act XV. of 1873, s. 30, and Act XV. of 1883, s. 47 (*1*), cl. *b*; as to the Panjáb, Act XIII. of 1884, s. 67, cl. *b*.

Cruelty to animals.

Second.—Any person who wantonly or cruelly beats, abuses, or tortures any animal:

Third.—Any person who keeps any cattle or conveyance of any kind standing longer than is required for loading or unloading, or for taking up or setting down passengers, or who leaves any conveyance in such a manner as to cause inconvenience or danger to the public:

Obstructing passengers.

Exposing goods for sale.

Fourth.—Any person who exposes any goods for sale:

Fifth.—Any person who throws or lays down any dirt, filth, rubbish, or any stones or building materials; or who constructs any cowshed, stable, or the like; or who causes any offensive matter to run from any house, factory, dung-heap, or the like:

Throwing dirt into street.

Being drunk or riotous.

Sixth.—Any person who is found drunk or riotous, or who is incapable of taking care of himself:

Seventh.—Any person who wilfully and indecently exposes his person or any offensive deformity or disease, or commits nuisance by easing himself, or by bathing or washing in any tank or reservoir not being a place set apart for that purpose:

Indecent exposure of person.

Neglect to protect dangerous places.

Eighth.—Any person who neglects to fence in, or duly to protect, any well, tank, or other dangerous place or structure.

35.* Any charge against a police-officer above the rank of a constable under this Act shall be enquired into and determined only by an officer exercising the powers of a Magistrate.

Jurisdiction. Proviso.

36. Nothing contained in this Act shall be construed to prevent any person from being prosecuted under any other Regulation or Act for any offence made punishable by this Act, or from being liable under any other Regulation or Act to any other or higher penalty or punishment than is provided for such offence by this Act:

Power to prosecute under other law not affected.

Provided that no person shall be punished twice for the same offence.

Proviso.

37. All forfeitures or penalties imposed under the authority of this Act for offences punishable by a Magistrate may, in case of non-payment thereof, be levied by distress and sale of the property of the offender within the limits of the jurisdiction of the Magistrate of the district, by warrant under the hand of the Magistrate who made the order.

Levy of forfeiture and penalties by distress.

38. In case any such forfeiture or penalty shall not be forthwith paid, the Magistrate may order the offender to be apprehended and detained in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of the Magistrate for his appearance at such place and time as shall be appointed for the return of the warrant of distress.

Procedure until return is made to warrant of distress.

39. If, upon the return of such warrant, it shall appear that no sufficient distress can be had whereon to levy such fine, and the same shall not be forthwith paid, or in case it

Imprisonment if distress not sufficient.

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* See Act X. of 1882, Sch. I.

Act V. of 1861.

shall appear to the satisfaction of the Magistrate, by the confession of the offender or otherwise, that he has not sufficient property whereupon such fine or sum of money could be levied if a warrant of distress were issued, the Magistrate may, by warrant under his hand, commit the offender, provided he is not a European British subject, to prison, there to be imprisoned, according to the discretion of the Magistrate, for any term not exceeding two calendar months when the amount of fine shall not exceed fifty rupees, and for any term not exceeding four calendar months when the amount shall not exceed one hundred rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount.

Levy of fines from European British subjects.

40. If the offender be a European British subject, the Magistrate shall record the facts and transmit such record to the District Court of the district wherein the offender is convicted, and the amount of the fine and costs (if any) shall be levied in the manner provided for the execution of decrees of the Civil Court.

Rewards to police and informers payable to general police-fund.

41. All sums paid for the service of process by police-officers, and all rewards, forfeitures, and penalties, or shares of rewards, forfeitures, and penalties, which by law are payable to informers, shall, when the information is laid by a police-officer, be paid into the General Police Fund.*

Limitation of action.

42. All actions and prosecutions against any person, which may be lawfully brought for any thing done or intended to be done under the provisions of this Act or under the general police-powers hereby given, shall be commenced within three months after the act complained of shall have been committed, and not otherwise ;† and notice in writing of such action and of the cause thereof shall be given to the defendant, or to the District Superintendent or an Assistant District Superintendent of the district in which the act was committed, one month at least before the commencement of the action.

Tender of amends.

No plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action brought, by, or on behalf of, the defendant ; and, though a decree shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the Judge before whom the trial is held shall certify his approbation of the action :

Proviso.

Provided always that no action shall in any case lie where such officers shall have been prosecuted criminally for the same act.

Plea that act was done under warrant.

43. When any action or prosecution shall be brought or any proceedings held against any police-officer for any act done by him in such capacity, it shall be lawful for him to plead that such act was done by him under the authority of a warrant issued by a Magistrate.

Such plea shall be proved by the production of the warrant directing the act, and purporting to be signed by such Magistrate ; and the defendant shall

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* See s. 16, *supra*.

† So much of s. 42 as relates to the limitation of suits was repealed by Act IX. of 1871, s. 2.

thereupon be entitled to a decree in his favour, notwithstanding any defect of jurisdiction in such Magistrate. No proof of the signature of such Magistrate shall be necessary, unless the Court shall see reason to doubt its being genuine: Act V. of 1861.

Provided always that any remedy which the party may have against the authority issuing such warrant shall not be affected by anything contained in this section.

Proviso.

44. It shall be the duty of every officer in charge of a police-station to keep a general diary in such form as shall, from time to time, be prescribed by the Local Government, and to record therein all complaints and charges preferred, and names of all persons arrested, the names of the complainants, the offences charged against them, the weapons or property that shall have been taken from their possession or otherwise, and the names of the witnesses who shall have been examined.

Police-officers to keep diary.

The Magistrate of the district shall be at liberty to call for and inspect such diary.

45. The Local Government may direct the submission of such returns by the Inspector-General and other police-officers as to such Local Government shall seem proper, and may prescribe the form in which such returns shall be made.

Local Government may prescribe form of returns.

46. This Act shall not take effect in any presidency, province, or place * unless the same shall be extended to such presidency, province, or place by the Governor-General of India in Council by an order to be published in the Government Gazette.

Scope of Act.

When the Act shall have been so extended, it shall be carried into effect in such presidency, province, or place as the Local Government, by an order to be published in the official Gazette, shall direct.

47. It shall be lawful for the Local Government, in carrying this Act into effect in any part of the territories subject to such Local Government, to declare that any authority which now is or may be exercised by the Magistrate of the district over any village-watchman or other village-police-officer for the purposes of police shall be exercised, subject to the general control of the Magistrate of the district, by the District Superintendent of Police.

Authority of District Superintendent of Police over village police.

FORM.

(See section 8.)

A B has been appointed a member of the police-force under Act V. of 1861, and is vested with the powers, functions, and privileges of a police-officer.

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* In the Madras and Bombay Presidencies there are special Police Acts.—See Act XXIV., 1859, and Bom. Act VII., 1867.

Act XVI. of 1861.

ACT XVI. OF 1861.*

RECEIVED THE G.-G.'S ASSENT ON THE 7TH JULY 1861.

(An Act for licensing and regulating Stage Carriages.)

Preamble.

WHEREAS it is expedient to license and to regulate stage-carriages in British India; It is enacted as follows :—

Definition of stage-carriage.

1. Every carriage drawn by one or more horses†, which shall ordinarily be used for the purpose of conveying passengers for hire to or from any place in British India, shall, without regard to the form or construction of such carriage, be deemed to be a stage-carriage within the meaning of this Act:

Provided that this Act shall not apply to carriages not ordinarily used for journeys of a greater distance than 20 miles.

Carriages to be licensed.

2. No carriage shall be used as a stage-carriage unless licensed by a Magistrate† or by the Chief Commissioner of Police of a Presidency-town.

Power to refuse license.

3. The Magistrate or Chief Commissioner of Police to whom the application for a license of a stage-carriage is made may refuse to license the same, if he shall be of opinion that such stage-carriage is unserviceable, or is unsafe, or unfit for public accommodation or use.

Particulars of license.

If a Magistrate or Chief Commissioner of Police as aforesaid shall grant a license, the license shall set forth the number thereof, the name and residence of the proprietor of the stage-carriage, the place at which his head-office is held, the largest number of passengers and the greatest weight of luggage to be carried in or on such carriage, the number of horses by which such carriage is to be drawn, and the name of the place at which such carriage is licensed.

Charge for, and duration of, license.

4. For every such license there shall be paid by the proprietor of the stage-carriage the sum of five rupees, and such license shall be in force for one year from the date thereof,

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* See 2 & 3 Wm. IV., c. 120; 3 & 4 Wm. IV., c. 48; 5 & 6 Vic., c. 79; 10 & 11 Vic., c. 42; 11 & 12 Vic., c. 118, s. 2.

Act XVI. of 1861 (as amended by Act XVI. of 1876) has been declared to apply to the whole of British India, but not so as to supersede or contravene provisions of local laws dealing with the same subject.—See Act XVI. of 1876, s. 2. For local laws, see Bom. Act VI. of 1863 and Mad. Act III. of 1879.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely :—

The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	See *Gazette of India*. Oct. 22, 1881, Pt. I., p. 504.
The North-Western Provinces Tarái	Ditto . Sep. 23, 1876, Pt. I., p. 505.

† For definition see s. 21, *infra*.

When a licensed stage-carriage is transferred to a new proprietor within the year, the name of such new proprietor shall, on application to that effect, be substituted in the license for the name of the former proprietor without any further payment for that year ; and every person who appears by the license to be the proprietor shall be deemed to be such proprietor for all the purposes of this Act.

Particulars to be painted on conspicuous part of carriage.

5. On any stage-carriage being licensed, the proprietor thereof shall cause the number of the license and all the other particulars of the license to be distinctly painted in the English language and character upon a conspicuous part of such stage-carriage.

Penalty for letting carriage without having particulars painted.

6. The proprietor of any licensed stage-carriage, who shall let such stage-carriage for hire without the particulars specified in section 3 being painted on such carriage in the manner directed in the last preceding section, shall be liable to a fine not exceeding one hundred rupees.

Penalty for letting for hire unlicensed carriage.

7. Whoever lets for hire any stage-carriage without the same being licensed as provided by this Act shall be liable, on a first conviction, to a fine not exceeding one hundred rupees, and, on any subsequent conviction, to a fine which may extend to five hundred rupees.

Penalty for allowing carriage to be drawn by fewer animals, or more passengers, &c., to be carried, than provided by license.

8. Any proprietor, or agent of a proprietor, or any driver of a licensed stage-carriage, who knowingly permits such carriage to be drawn by a less number of horses, or who knowingly permits a larger number of passengers, or a greater weight of luggage, to be carried by such stage-carriage than shall be provided by the license, shall be liable, on a first conviction, to a fine not exceeding one hundred rupees, and, on any subsequent conviction, to a fine which may extend to five hundred rupees.

In every case where such stage-carriage shall be proved to have been drawn by a less number of horses, or to have carried a larger number of passengers or a greater weight of luggage than shall be provided by the license, the proprietor of such carriage shall be held to have knowingly permitted such offence, unless he shall prove that the offence was not committed with his connivance, and that he had taken every reasonable precaution, and had made reasonable provision, to prevent the commission of the offence.

Penalty for ill-treating animals.

9. Any person who shall cruelly beat, ill-treat, over-drive, abuse, torture, or cause, or procure to be cruelly beaten, ill-treated, over-driven, abused, or tortured, any horse employed in drawing, or harnessed to, any stage-carriage, or who shall harness to or drive in any stage-carriage any horse which, from sickness, age, wounds, or other cause, is unfit to be driven in such stage-carriage, shall, for every such offence, be liable to a fine not exceeding one hundred rupees.

Revocation of license.

10. Any Magistrate or Chief Commissioner of Police within the local limits of whose jurisdiction any stage-carriage shall ply, or who has granted the license of any stage-carriage, may cancel the license of such stage-carriage, if it shall appear to him that such stage-carriage, or any horse or any harness used with such carriage, is unserviceable or unsafe, or otherwise unfit for public accommodation or use.

Act XVI. of 1861.

Penalty for not conforming to provisions of section 5.

11. In any station or place in which a Magistrate shall reside and be, any police-officer may, in any place within two miles of the office of such Magistrate, seize any stage-carriage with the horse harnessed thereto, if the full particulars of the license of such stage-carriage be not distinctly painted on such stage-carriage in the manner provided in section 5 of this Act.

Such carriage, with the horse harnessed thereto, shall be taken without delay by such police-officer before such Magistrate, who shall forthwith proceed to hear and determine the complaint of such police-officer; and if, thereupon, any fine is imposed by such Magistrate, and such fine is paid, such stage-carriage and horse shall be immediately released; and, if such fine be not paid, such stage-carriage and horse may be detained for twenty days as security for the payment thereof; and, if the fine be not sooner paid, they may be sold, and the proceeds applied (so far as they extend) to the payment of the said fine, and all costs and charges incurred on account of the detention and sale; and the surplus (if any), when claimed, shall be paid to the proprietor of such carriage and horse; and, if such surplus be not claimed within a further period of two months from such sale, the same shall be forfeited to the State.

If the proceeds of such sale do not fully pay the fine and costs and charges aforesaid, the balance may be recovered as hereinafter provided.

Penalty for misconduct on part of drivers.

12. If any driver of any stage-carriage, or any other person having the care thereof, shall, through intoxication, neglect, or by wanton or furious driving, or by any other misconduct, endanger the safety of any passenger or other person, or shall injure or endanger the property of the proprietor of such stage-carriage or of any other person, every such person so offending shall be liable to a fine not exceeding one hundred rupees.

Penalty when recoverable from proprietor.

13. Whenever the driver of any stage-carriage, or the owner of any horse employed in drawing any stage-carriage, shall have committed any offence against this Act for the commission whereof any penalty is by this Act imposed, other than an offence specified in section 8, and such driver or owner shall not be known, or being known, cannot be found, or if the penalty cannot be recovered from such driver or owner, the proprietor of such carriage shall be liable to every such penalty as if he had been the driver of such carriage or owner of such horse at the time when such offence was committed:

Proviso.

Provided that, if any such proprietor shall make out, to the satisfaction of the Magistrate before whom any complaint or information shall be heard, by sufficient evidence, that the offence was committed by such driver or owner without the privity or knowledge of such proprietor, and that no profit, advantage, or benefit, either directly or indirectly, has accrued or can accrue to such proprietor therefrom, and that he has used his endeavour to find out such driver or owner, and has done all that was in his power to recover the amount of the penalty from him, the Magistrate may discharge the proprietor from such penalty, and shall levy the same upon such driver or owner when found.

Issue of summons.

14. Whenever any charge is made before any Magistrate of any offence under this Act on which it is necessary to issue a summons to the proprietor of a stage-carriage, the Magistrate shall issue such summons directed to such proprietor or his nearest

agent, and may transmit such summons by letter-post, which shall be deemed to be good service thereof.

The letter shall be registered at the post-office, and the cost of the registration shall be borne by the Government in the first instance, but may be charged as costs in the case.

The summons shall allow a reasonable time, in reference to the distance to which the summons is sent, for the appearance of such proprietor or his agent as aforesaid.

Adjudication of penalties.

15. All penalties incurred under this Act shall be adjudged by a Magistrate or Chief Commissioner of Police as aforesaid, and all orders made under this Act by such Magistrate or Chief Commissioner of Police shall be final.

Recovery of penalties, &c.

16. All penalties imposed under this Act, or any balance of any fine, costs, or charges as mentioned in section 11 of this Act, may, in case of non-payment or non-recovery thereof, be levied by distress and sale of the moveable property of the offender by warrant under the hand of the Magistrate who imposed the same.

Offender may be apprehended and detained in custody until return of warrant of distress.

17. In case any such penalties shall not be forthwith paid, such Magistrate may order the offender to be apprehended and detained in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such Magistrate for his appearance at such place and time as shall be appointed for the return of the warrant of distress.

Imprisonment of offender if distress not sufficient.

18. If, upon the return of such warrant, it shall appear that no sufficient distress can be had whereon to levy such penalty, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such Magistrate, by the confession of the offender or otherwise, that he has not sufficient goods and chattels whereupon such penalty could be levied if warrant of distress were issued, such Magistrate may, by warrant under his hand, commit the offender, provided he is not a European British subject, to prison, there to be imprisoned, according to the discretion of such officer, for any term not exceeding two calendar months when the amount of penalty shall not exceed fifty rupees, and for any term not exceeding four calendar months when the amount shall not exceed one hundred rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount.

Recovery of penalty and costs from European British subjects.

19. If the offender shall be a European British subject, the Magistrate shall record the facts and transmit such record to the District Court of the district wherein the offender is convicted, and the amount of penalty and the costs (if any) shall be levied in the manner provided for the execution of decrees of the Civil Court.

Jurisdiction.

20. On complaint made before any Magistrate of any offence committed under this Act, it shall not be necessary to prove that the offence was committed within the local limits of such Magistrate or other officer.

Act III. of 1862.

Interpretation-clause.

21. The term "Magistrate" in this Act shall include all Magistrates and other persons exercising the powers of a Magistrate:

The term "British India" in this Act shall denote the territories that are or shall be vested in Her Majesty by the Statute 21 & 22 Vic., c. 106, entitled "An Act for the better government of India:"

All expressions and provisions which in this Act are applied to horses shall also apply to all other animals employed in drawing any carriage ordinarily used for the purpose of conveying passengers for hire to or from any place in British India:*

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number.

Words importing the masculine gender shall include the feminine.

ACT III. OF 1862.

RECEIVED THE G.-G.'S ASSENT ON THE 28TH FEBRUARY 1862.

An Act to amend the law relating to the use of a Government Seal.

Preamble.

WHEREAS it is expedient to adapt the law relating to the use of a Government Seal to the present form of the Government in India; It is enacted as follows:—

Seal to be used instead of seal of East India Company.

Whenever it is required by any regulation of a Local Government or by any Act of the Governor-General of India in Council, that the seal of the East India Company shall be affixed on behalf or by the authority of the Government to any instrument or document, it shall be lawful, if the seal is to be affixed on behalf or by the authority of a Local Government, to affix, in lieu of the seal of the East India Company, a seal bearing the designation of such Local Government, or, if the seal is to be affixed on behalf or by the authority of the Government of India, a seal bearing the inscription "Government of India;" and such instrument or document so sealed shall, to all intents and purposes, be as valid and effectual as if the seal so used had been that of the East India Company.†

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* See Act XVI. of 1876, s. 1.

† Legislation on this subject was originally suggested in order to meet a difficulty respecting the seal to be used under Act XIX. of 1838 (*for the registration of coasting vessels in the Bombay Presidency*). Section 8 of that Act requires the certificates of registry 'shall be sealed with the seal of the East India Company,' and the Government of Bombay were advised by their law-officers that no other seal could properly be used for such certificates until some Act should be passed "prescribing the seal to be used in lieu of the seal of the East India Company."—*Statement of Objects and Reasons.*

ACT XVI. OF 1863.

RECEIVED THE G.-G.'S ASSENT ON THE 10TH MARCH 1863.

*An Act to make special provision for the levy of the Excise Duty payable on Spirits used exclusively in Arts and Manufactures or in Chemistry.**

Preamble.

WHEREAS it is expedient to make special provision for the levy of the excise-duty payable on spirits used exclusively in arts and manufactures or in chemistry; It is enacted as follows:—

Duty payable on removal of such spirits from distillery.

1. Spirits intended to be used exclusively in arts and manufactures or in chemistry may be removed from any licensed distillery in any part of British India on payment of duty ~~calculated at ten per cent.~~ on the value of the spirits; ~~not exceeding five p.c.~~ see Act

Proviso.

provided that no spirits shall be so removed until they have been effectually and permanently rendered unfit for human consumption.

Rules for ascertaining that spirits to be removed have been rendered unfit for human consumption, &c.

2. The Board of Revenue, or other authority specially authorized in that behalf by the Local Government, shall prescribe from time to time, subject to the approval of the Local Government, rules

for ascertaining and determining that spirits proposed to be removed for the purposes aforesaid have been effectually and permanently rendered unfit for human consumption, as required by section 1 of this Act;

for causing such spirits to be so rendered, if necessary, by its own officers, at the expense of the person who wishes to remove them; and

for fixing the value of the spirit on which the *ad-valorem* duty shall be levied.

Penalty for breach of such rules.

3. Every person who shall wilfully contravene any rule prescribed by the Board of Revenue, or other authority as aforesaid, under the last preceding section of this Act, shall be liable, on conviction before any officer exercising the powers of a Magistrate, to a penalty not exceeding five hundred rupees for every such offence.

Penalty for attempting to render fit for human consumption spirits removed under Act.

4. Every person who shall attempt, or shall connive at an attempt, to render fit for human consumption spirits removed from a distillery under the provisions of this Act, shall be liable to a penalty not exceeding one thousand rupees;

and the possessor of such spirits on which such attempt has been made, or which may have been rendered fit for human consumption, shall be liable, on conviction before any officer exercising the powers of a Magistrate, to a penalty not exceeding five hundred rupees.

Penalty how levied.

5. Any penalty imposed under either of the last two preceding sections may, in case of non-payment, be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand of the officer by whom such penalty was imposed.

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* Declared to apply to the whole of British India, except the Scheduled Districts, by Act XV. of 1874.

Act XVI. of 1863.

6. In case any such penalty shall not be forthwith paid, any such officer may order the offender to be apprehended and detained in safe custody, until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such officer for his appearance at such place and time as shall be appointed for the return of the warrant of distress.

In case of non-payment of penalty, offender may be detained pending return to distress-warrant.

7. If upon the return of such warrant it shall appear that no sufficient distress can be had whereon to levy such penalty, and the same shall not be forthwith paid, or

Imprisonment of offender in case of failure to recover penalty by distress.

in case it shall appear to the satisfaction of such officer by the confession of the offender or otherwise that he has not sufficient goods and chattels whereupon such penalty could be levied if a warrant of distress were issued,

any such officer may, by warrant under his hand, commit the offender to the civil jail, there to be imprisoned, according to the discretion of such officer, for any term not exceeding two calendar months when the amount of penalty shall not exceed fifty rupees, and for any term not exceeding four calendar months, when the amount shall not exceed one hundred rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount.

8. [*Repealed by Act XII. of 1891, Sch. I.*]

9. In every case of conviction under section 3 or section 4 of this Act, the liquor or spirits with the cask or vessel containing the same, and the cart, boat, and animal or animals employed in carrying such liquor or spirit, shall be liable to confiscation.

Confiscation in cases of conviction under section 3 or 4.

ACT XX. OF 1863.*

RECEIVED THE G.-G.'S ASSENT ON THE 10TH MARCH 1863.

An Act to enable the Government to divest itself of the management of Religious Endowments.

Preamble.

WHEREAS it is expedient to relieve the Boards of Revenue, and the Local Agents, in the Presidency of Fort William in Bengal and the Presidency of Fort Saint George, from the duties imposed on them by Regulation XIX., 1810, of the Bengal Code (*for the due appropriation of the rents and produce of lands granted for the support of Mosques, Hindu Temples, Colleges, and other purposes; for the maintenance and repair of Bridges, Sarais, Kattras, and other public buildings; and for the custody and disposal of Nazul Property or Escheats*), and Regulation VII., 1817, of the Madras Code (*for the due appropriation of the rents and produce of lands granted for the support of Mosques, Hindu Temples, and Colleges or other public purposes; for the maintenance and repair of Bridges, Choultries, or Chattirams, and other public buildings; and for the custody and disposal of Escheats*), so far as those duties embrace the superintendence of lands granted for the support of mosques or Hindu temples and for other religious uses; the appropriation of endowments made for the maintenance of such religious establishments; the repair and preservation of buildings connected therewith, and the appointment of trustees or managers thereof; or involve any connection with the management of such religious establishments;† It is enacted as follows:—

1. [*Repealed by Act XIV. of 1870.*]

Interpretation-clause.

2. In this Act—

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* Act XX. of 1863 has been extended to Canara by Bom. Act VII. of 1865.

S. 22 applies to the whole of British India.

The Act has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	See *Gazette of India*.	Oct. 22, 1881, Pt. I., p. 504.
The Jhánsi Division	Ditto	Aug. 31, 1878, Pt. I., p. 546.
The scheduled portion of the Mirzápur District	Ditto	May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	May 31, 1879, Pt. I., p. 382.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán	Ditto	June 5, 1886, Pt. I., p. 361.

It has been extended, under the same Act, to the following Scheduled Districts :—

Kumáon and Garhwál	See *Gazette of India*.	Nov. 4, 1876, Pt. I., p. 606.
The North-Western Provinces Tarái	Ditto	Sep. 23, 1876, Pt. I., p. 505.
Ajmere and Merwára	Ditto	Oct. 20, 1877, Pt. I., p. 605.

† Certain words, which were repealed by Act XVI. of 1874, have been omitted.

Act XX. of 1863.

words importing the singular number shall include the plural, and words importing the plural number shall include the singular :

Number.

Gender.

words importing the masculine gender shall include females :

"Civil Court" and "Court."

the words "Civil Court" and "Court" shall mean the principal Court of original civil jurisdiction in the district in which the mosque, temple, or religious establishment is situate, relating to which, or to the endowment whereof, any suit shall be instituted or application made under the provisions of this Act.

Government to make special provision respecting mosques, &c.

3. In the case of every mosque, temple, or other religious establishment to which the provisions of either of the Regulations specified in "the preamble to this Act"* are applicable, and the nomination of the trustee, manager, or superintendent thereof, at the time of the passing of this Act, is vested in, or may be exercised by, the Government or any public officer, or in which the nomination of such trustee, manager, or superintendent shall be subject to the confirmation of the Government or any public officer, the Local Government shall, as soon as possible after the passing of this Act, make special provision as hereinafter provided.

Transfer to trustees, &c., of trust-property in charge of Revenue Board.

4. In the case of every such mosque, temple, or other religious establishment which, at the time of the passing of this Act, shall be under the management of any trustee, manager, or superintendent, whose nomination shall not vest in, nor be exercised by, nor be subject to the confirmation of, the Government or any public officer, the Local Government shall, as soon as possible after the passing of this Act, transfer to such trustee, manager, or superintendent all the landed or other property which, at the time of the passing of this Act, shall be under the superintendence or in the possession of the Board of Revenue or any local agent, and belonging to such mosque, temple, or other religious establishment, except such property as is hereinafter provided ;

Cessation of Board's powers as to such property.

and the powers and responsibilities of the Board of Revenue and the local agents, in respect to such mosque, temple, or other religious establishment, and to all land and other property so transferred, except as regards acts done and liabilities incurred by the said Board of Revenue or any local agent previous to such transfer, shall cease and determine.

Procedure in case of dispute as to right of succession to vacated trusteeship.

5. Whenever from any cause a vacancy shall occur in the office of any trustee, manager, or superintendent to whom any property shall have been transferred under the last preceding section, and any dispute shall arise respecting the right of succession to such office, it shall be lawful for any person interested in the mosque, temple, or religious establishment to which such property shall belong, or in the performance of the worship or of the service thereof, or the trusts relating thereto, to apply to the Civil Court to appoint a manager of such mosque, temple, or other religious establishment ; and thereupon such Court may appoint such manager to act until some other person shall by suit have established his right of succession to such office.

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* In s. 3 the words quoted have been substituted for the word and figure "section 1," by Act XII. of 1891.

The manager so appointed by the Civil Court shall have and shall exercise all the powers which, under this or any other Act, the former trustee, manager, or superintendent in whose place such manager is appointed by the Court had or could exercise in relation to such mosque, temple, or religious establishment, or the property belonging thereto.

Powers of managers appointed by Court.

6. The rights, powers, and responsibilities of every trustee, manager, or superintendent to whom the land and other property of any mosque, temple, or other religious establishment is transferred in the manner prescribed in section 4 of this Act, as well as the conditions of their appointment, election, and removal, shall be the same as if this Act had not been passed, except in respect of the liability to be sued under this Act, and except in respect of the authority of the Board of Revenue and local agents, given by the Regulations hereby repealed, over such mosque, temple, or religious establishment and over such trustee, manager, or superintendent, which authority is hereby determined and repealed.

Rights, &c., of trustees to whom property is transferred under section 4.

All the powers which might be exercised by any Board or local agent, for the recovery of the rent of land or other property transferred under the said section 4 of this Act, may, from the date of such transfer, be exercised by any trustee, manager, or superintendent to whom such transfer is made.

Appointment of committees.

7. In all cases described in section 3 of this Act the Local Government shall, once for all, appoint one or more committees in every division or district, to take the place, and to exercise the powers, of the Board of Revenue and the local agents under the Regulations hereby repealed.

Such committee shall consist of three or more persons, and shall perform all the duties imposed on such Board and local agents, except in respect of any property which is specially provided for under section 21 of this Act.

Constitution and duties of committees.

8. The members of the said committee shall be appointed from among persons professing the religion for the purposes of which the mosque, temple, or other religious establishment was founded or is now maintained, and in accordance, so far as can be ascertained, with the general wishes of those who are interested, in the maintenance of such mosque, temple, or other religious establishment.

Qualifications of member of committee.

The appointment of the committee shall be notified in the official Gazette.

In order to ascertain the general wishes of such persons in respect of such appointment, the Local Government may cause an election to be held under such rules (not inconsistent with the provisions of this Act) as shall be framed by such Local Government.

Ascertaining wishes of persons interested.

Tenure of office.

9. Every member of a committee appointed as above shall hold his office for life, unless removed for misconduct or unfitness ;

Removal.

and no such member shall be removed except by an order of the Civil Court as hereinafter provided.

Act XX. of 1863.

10. Whenever any vacancy shall occur among the members of a committee appointed as above, a new member shall be elected to fill the vacancy by the persons interested as above provided.

Vacancies to be filled.

The remaining members of the committee shall, as soon as possible, give public notice of such vacancy, and shall fix a day, which shall not be later than three months from the date of such vacancy, for an election of a new member by the persons interested as above provided, under rules for elections which shall be framed by the Local Government;

Procedure.

and whoever shall be then elected, under the said rules, shall be a member of the committee to fill such vacancy.

If any vacancy as aforesaid shall not be filled up by such election as aforesaid within three months after it has occurred, the Civil Court, on the application of any person whatever, may appoint a person to fill the vacancy, or may order that the vacancy be forthwith filled up by the remaining members of the committee, with which order it shall then be the duty of such remaining members to comply; and, if this order be not complied with, the Civil Court may appoint a member to fill the said vacancy.

When Court may fill vacancy.

11. No member of a committee appointed under this Act shall be capable of being, or shall act, also as a trustee, manager, or superintendent of the mosque, temple, or other religious establishment for the management of which such committee shall have been appointed.

No member of committee to be also trustee, &c., of mosque, &c.

12. Immediately on the appointment of a committee as above provided, for the superintendence of any such mosque, temple, or religious establishment, and for the management of its affairs, the Board of Revenue, or the local agents acting under the authority of the said Board, shall transfer to such committee all landed or other property which at the time of appointment shall be under the superintendence, or in the possession, of the said Board or local agents, and belonging to the said religious establishment, except as is hereinafter provided for;

On appointment of committee, Board and local agents to transfer property.

and thereupon the powers and responsibilities of the Board and the local agents, in respect to such mosque, temple, or religious establishment, and to all land and other property so transferred, except as above, and except as regards acts done and liabilities incurred by the said Board or agents previous to such transfer, shall cease and determine.

Termination of powers and responsibilities of Board and agents.

All the powers which might be exercised by any Board or local agent for the recovery of the rent of land or other property transferred under this section may, from the date of such transfer, be exercised by such committee to whom such transfer is made.

Commencement of powers of committee.

13. It shall be the duty of every trustee, manager, and superintendent of a mosque, temple, or religious establishment to which the provisions of this Act shall apply to keep regular accounts of his receipts and disbursements, in respect of the endowments and expenses of such mosque, temple, or other religious establishment;

Duty of trustee, &c., as to accounts;

and it shall be the duty of every committee of management, appointed or acting under the authority of this Act, to require from every trustee, manager, and superintendent of such mosque, temple, or other religious establishment, the production of such regular accounts of such receipts and disbursements at least once in every year; and every such committee of management shall themselves keep such accounts thereof.

and of committee.

14. Any person or persons interested in any mosque, temple, or religious establishment, or in the performance of the worship or of the service thereof, or the trusts relating thereto, may, without joining as plaintiff any of the other persons interested therein, sue before the Civil Court the trustee, manager, or superintendent of such mosque, temple, or religious establishment, or the member of any committee appointed under this Act, for any misfeasance, breach of trust, or neglect of duty, committed by such trustee, manager, superintendent, or member of such committee, in respect of the trusts vested in, or confided to, them respectively;

Person interested may singly sue in case of breach of trust, &c.

and the Civil Court may direct the specific performance of any act by such trustee, manager, superintendent, or member of a committee,

Powers of Civil Court.

and may decree damages and costs against such trustee, manager, superintendent, or member of a committee,

and may also direct the removal of such trustee, manager, superintendent, or member of a committee.

15. The interest required in order to entitle a person to sue under the last preceding section need not be a pecuniary, or a direct or immediate, interest, or such an interest as would entitle the person suing to take any part in the management or superintendence of the trusts.

Nature of interest entitling person to sue.

Any person having a right of attendance, or having been in the habit of attending, at the performance of the worship or service of any mosque, temple, or religious establishment, or of partaking in the benefit of any distribution of alms, shall be deemed to be a person interested within the meaning of the last preceding section.

16. In any suit or proceeding instituted under this Act it shall be lawful for the Court before which such suit or proceeding is pending to order any matter in difference in such suit to be referred for decision to one or more arbitrators.

Reference to arbitrators.

Whenever any such order shall be made, the provisions of Chapter XXXVII.* of the Code of Civil Procedure shall in all respects apply to such order and arbitration, in the same manner as if such order had been made on the application of the parties under section 506* of the said Code.

Civil Procedure Code applied.

17. Nothing in the last preceding section shall prevent the parties from applying to the Court, or the Court from making the order or reference, under the said section 506* of the said Code of Civil Procedure.

Reference under Civil Procedure Code.

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* See Act XIV. of 1882, s. 3.

Act XX. of 1863.

Application for leave to institute suit.

18. No suit shall be entertained under this Act without a preliminary application being first made to the Court for leave to institute such suit.*

The Court, on the perusal of the application, shall determine whether there are sufficient *primâ-facie* grounds for the institution of a suit, and, if in the judgment of the Court, there are such grounds, leave shall be given for its institution.*

Costs.

If the Court shall be of opinion that the suit has been for the benefit of the trust, and that no party to the suit is in fault, the Court may order the costs or such portion as it may consider just to be paid out of the estate.

Court may require accounts of trust to be filed.

19. Before giving leave for institution of a suit, or, after leave has been given, before any proceeding is taken, or at any time when the suit is pending, the Court may order the trustee, manager, or superintendent, or any member of a committee, as the case may be, to file in Court the accounts of the trust, or such part thereof, as to the Court may seem necessary.

Proceedings for criminal breach of trust.

20. No suit or proceeding before any Civil Court under the preceding sections shall in any way affect or interfere with any proceeding in a Criminal Court for criminal breach of trust.

Cases in which endowments are partly for religious and partly for secular purposes.

21. In any case in which any land or other property has been granted for the support of an establishment partly of a religious and partly of a secular character,

or in which the endowment made for the support of an establishment is appropriated partly to religious and partly to secular uses,

the Board of Revenue, before transferring to any trustee, manager, or superintendent, or to any committee of management appointed under this Act, shall determine what portion, if any, of the said land or other property shall remain under the superintendence of the said Board for application to secular uses,

and what portion shall be transferred to the superintendence of the trustee, manager, or superintendent, or of the committee,

and also what annual amount, if any, shall be charged on the land or other property which may be so transferred to the superintendence of the said trustee, manager, or superintendent, or of the committee, and made payable to the said Board or to the local agents, for secular uses as aforesaid.

In every such case the provisions of this Act shall take effect only in respect to such land and other property as may be so transferred.

Government not to hold charge henceforth of property for support of any mosque, temple, &c.

22. Except as provided in this Act, it shall not be lawful† for any Government in India, or for any officer of any Government in his official character,

to undertake or resume the superintendence of any land or other property granted for the support of, or otherwise belonging to, any mosque, temple, or other religious establishment, or

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* Certain words, which were repealed by Act VII. of 1870, have been omitted.

† Certain formal words, which were repealed by Act XVI. of 1874, have been omitted.

to take any part in the management or appropriation of any endowment made for the maintenance of any such mosque, temple, or other establishment, or

to nominate or appoint any trustee, manager, or superintendent thereof, or to be in any way concerned therewith.

Effect of Act in respect of Regulations therein mentioned, and of buildings of antiquity, &c.

23. Nothing in this Act shall be held to affect the provisions of the Regulations mentioned in this Act, except in so far as they relate to mosques, Hindu temples, and other religious establishments; or to prevent the Government from taking such steps as it may deem necessary, under the provisions of the said Regulations, to prevent injury to and preserve buildings remarkable for their antiquity, or for their historical or architectural value, or required for the convenience of the public.

"India."

24. The word "India" in this Act shall denote the territories which are or may become vested in Her Majesty by the Statute 21 & 22 Vic., c. 106, entitled "An Act for the better government of India."

ACT XXIII. OF 1863.*

RECEIVED THE G.-G.'S ASSENT ON THE 10TH MARCH 1863.

An Act to provide for the adjudication of claims to waste-lands.

Preamble.

WHEREAS it is expedient to make special provision for the speedy adjudication of claims which may be preferred to waste-lands proposed to be sold, or otherwise dealt with,

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* Act XXIII. of 1863 has been declared to be in force in the whole of British India, except as regards the Scheduled Districts.—See Act XV. of 1874, s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

West Jalpaiguri	See *Gazette of India*	. Mar. 5, 1881, Pt. I., p. 1.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	. Oct. 22, 1881, Pt. I., p. 504.
The Jhánsi Division. . . .	Ditto	. Aug. 21, 1878, Pt. I., p. 546.
Kumáon and Garhwál . . .	Ditto	. Nov. 4, 1876, Pt. I., p. 605.
The scheduled portion of the Mirzápur District	Ditto	. May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	. May 31, 1879, Pt. I., p. 382.
The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán	Ditto	. Jan. 30, 1886, Pt. I., p. 48.
The District of Lahaul . . .	Ditto	. May 11, 1886, Pt. I., p. 301.
The District of Silhat . . .	Ditto	. Oct. 4, 1879, Pt. I., p. 631.
The Districts of Kámrup, Naugong, Darrang, Sibságar, Lakhimpur, Goálpára (excluding the Eastern Dvárs), and Káchár (excluding the North Káchár Hills) . . .	Ditto	. Aug. 28, 1878, Pt. I., p. 533.

It has been extended, under the same Act, to the following Scheduled Districts:—

The Western Dvárs . . .	See *Gazette of India*	. Sep. 25, 1875, Pt. I., p. 497.
The North-Western Provinces Tarái	Ditto	. Sep. 23, 1876, Pt. I., p. 505.

Act XXIII. of 1863.

on account of Government, and objections taken to the sale or other disposition of such lands ; It is enacted as follows :—

Enquiry into claims to land or objections to its sale.

1. When any claim shall be preferred to any waste-land proposed to be sold or otherwise dealt with on account of Government, or when any objection shall be taken to the sale or other disposition of such land, the Collector of the district in which such land is situate, or other officer performing the duties of a Collector of land-revenue in such district, by whatever name his office is designated, shall, if the claim or objection be preferred within the period mentioned in the advertisement to be issued for the sale or other disposition of such land, which period shall not be less than three months, proceed to make an enquiry into the claim or objection.

Procedure in such cases.

2. The Collector or other officer as aforesaid shall call upon the claimant or objector to produce any evidence or documents upon which he may rely in proof of his claim or objection ; and, after considering the same, and making any further enquiry that may appear proper, shall dispose of the case by an order for the admission or rejection of the claim or objection, and, if the land is proposed to be sold, for the sale of the same subject to any condition or reservation which, to such Collector or other officer as aforesaid, shall appear to be proper.

Notification of conditions.

If the land is ordered to be sold subject to any condition or reservation, such condition or reservation shall be notified to intending purchasers at the time of sale.

Postponement of sale pending enquiry,

3. Pending an enquiry into any claim or objection under the last preceding section, the Collector or other officer as aforesaid shall postpone the sale or other disposition of the land ;

and to allow claimant to contest rejection of claim.

and, if he shall order that such claim or objection be rejected, he shall further postpone the sale or other disposition of the land, to allow the claimant or objector to contest the order of rejection in the manner hereinafter provided.

Sale to be stopped if claim appear to be established, but may afterwards be proceeded with.

4. If the Collector or other officer as aforesaid shall consider the claim or objection to be established, and that the sale or other disposition of the land should not take place, he shall stop the sale or other disposition of the land ;

but such sale or other disposition of the land may afterwards be proceeded with if, on an order issued by the Local Government to try the claim or objection, as provided in section 6 of this Act, the claimant or objector shall fail to establish the same.

Delivery to claimant of copy of order of rejection or for sale.

5. If the Collector or other officer as aforesaid shall order that the claim or objection be rejected, or that the land be sold subject to any condition or reservation, or that it be otherwise dealt with, he shall cause a copy of such order to be delivered to the claimant or objector ;

Order when final.

and, if such claimant or objector shall not within one week from the delivery of such copy, or within such further time as the Collector or other officer as aforesaid, for any special reason to be recorded, shall see fit to grant, give notice in writing to such Collector or other officer as aforesaid, that he intends to contest such order, the order shall be final.

If the claimant or objector shall, within the time allowed, give such notice, the Collector or other officer as aforesaid shall immediately make a report to the Board of Revenue or other superior revenue-authority; and shall forward with such report a copy of his order, stating fully all the circumstances of the case, and the evidence adduced in support, or otherwise, of the claim or objection;

Report to Board.

and such Board or other authority, on the receipt of such report, and after calling for any further information which it may consider necessary, may confirm, modify, or reverse the order of the Collector or other officer as aforesaid.

Decision of Board.

If the Board or other authority as aforesaid confirm the order of the Collector or other officer as aforesaid, or modify such order in such manner as to leave any part of such order in force adverse to the claimant or objector, the Collector or other officer as aforesaid shall certify such order to the Court constituted as hereinafter provided;

Certification to Court.

and such Court shall forthwith give notice to the claimant or objector;

Notice to claimant.

and, if such claimant or objector shall not* institute a suit in such Court to establish his claim or objection, the order of the Board or other authority aforesaid shall be final.

Decision when final.

6. The Local Government may, within twelve months after the date on which the claim of any claimant of waste-land, or the objection of any objector as aforesaid, shall have been admitted under this Act by the Collector or other officer as aforesaid, direct a suit to be brought to try the claim or objection of the claimant or objector, in a Court constituted as hereinafter provided.

Power to order suit to try claim admitted by Collector.

7. For the investigation and trial of claims under this Act the Local Government shall constitute, in every district in which there may be any waste-lands capable of being sold or otherwise dealt with on account of Government, a Court consisting of an uneven number of persons, not less than three, of whom the Judge of the district, or the officer presiding in the principal Civil Court of original jurisdiction in the district, by whatever name his office may be designated, shall be one.

Special Court for trying claims.

Any one or more of the members of which such Court shall consist shall have power to make all such orders in the case as may be necessary prior to the hearing of the suit:

Power of members.

Provided that, whenever the Collector or other officer by whom the original enquiry was held is the officer presiding in the principal Civil Court of original jurisdiction in the district, such officer shall not be a member of such Court.

Exclusion of officer making original enquiry.

8. Whenever any Court is constituted under this Act, notice thereof shall be given by written proclamation, copies of which shall be affixed in the several Courts, and in the offices of the several Collectors and Magistrates of the district:

Notice of constitution of special Courts.

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* Certain words referring to limitation of suits, which were repealed by Act IX. of 1871, have been omitted. For limitation, see now Act XV. of 1877, Sch. II., No. 1.

Act XIII. of 1863.

and from the date of the issue of such proclamation no other Court shall be competent to entertain any claim or objection belonging to the class of claims or objections for the trial and determination of which such Court is constituted.

Claims not cognizable in other Courts.

9. The Courts constituted under this Act shall be held at such place, or places, within the limits of their respective jurisdictions, as shall be considered most convenient.

Special Courts where held.

10. In every suit instituted under section 5 of this Act the claimant of the waste-land, or objector to the sale or other disposition of such land, shall appear as plaintiff; and the Collector or other officer as aforesaid shall appear as defendant on the part of Government.

Plaintiff and defendant in suit under section 5.

Either party may appear by pleader or by agent:

Appearance.

Provided that, if such other officer as aforesaid be the presiding officer of the principal Civil Court of original jurisdiction in the district, the Local Government shall appoint some other officer to appear as defendant in the case on its behalf.

Proviso.

In any suit ordered to be instituted by the Local Government under section 6 of this Act, the Government, by any officer to be appointed for the purpose, shall appear as plaintiff; and the claimant or objector as aforesaid shall appear as defendant.

Plaintiff and defendant in suit under section 6.

11. In suits instituted under this Act, except as hereinafter provided, the proceedings shall be regulated, so far as they can be, by the Code of Civil Procedure.*

Regulation of proceedings.

12. The Court shall fix a day for the appearance of the parties, and for the hearing of the suit, of which due notice shall be given to the parties or their agents; and on the day so fixed the parties or their agents shall bring their witnesses into Court, together with any documents on which they may intend to rely in support of their respective statements.

Procedure before hearing.

If either party require the assistance of the Court to procure the attendance of a witness on such day, he shall apply to the Court in sufficient time before the day fixed for the hearing of the suit; and the Court shall issue a subpœna requiring such witness to attend the Court on that day.

Procuring attendance of witnesses.

It shall be competent to the Court to require the personal attendance of the claimant of the waste-land, or objector, as aforesaid, on the day fixed for the hearing, or at any subsequent stage of the suit.

Power to require attendance of claimant.

13. On the day fixed for the hearing of the suit, or as soon after as may be practicable, the Court shall proceed to examine the claimant of the waste-land, or the objector, or his agent (when his personal attendance is not required), and the witnesses of the parties;

Procedure on hearing.

and upon such examination, and after inspecting the documents of the parties, and making any further enquiry that may appear necessary, shall proceed to pass such order in the case as it may consider just and proper.

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* See Act XIV. of 1882, s. 3.

14. No appeal shall lie from any decision or order passed under this Act, nor shall any such decision or order be open to revision.

No appeal or revision.

15. If, on the trial of any suit under this Act, any question of law, or of usage having the force of law, or the construction of a document affecting the merits of the case, shall arise, on which the Court shall entertain reasonable doubts, the Court may, either of its own motion, or on the application of any of the parties to the suit, draw up a statement of the case and submit it, with its own opinion, for the opinion of the High Court of Judicature, or of the highest Civil Court of appeal and revision in the territory in which the land is situate:

Reference of question of law, &c., to High Court, &c.

Provided that it shall be the duty of every Court held under this Act to make such reference to such High Court, or Court of appeal, if, in any suit under this Act, any question shall arise involving any principle of general importance, or the rights of a class.

When reference obligatory.

16. The Court may proceed in the case notwithstanding a reference to the High Court, or other highest Civil Court of appeal as aforesaid, and may pass an order contingent upon the opinion of the High Court, or other Court as aforesaid, on the point referred;

Court may proceed notwithstanding reference,

but no final order for the sale or other disposition of the land in question in the suit, or for the admission or rejection of any claim or objection which shall be before the Court in such suit, shall be passed until the receipt of the order of the said High Court, or highest Civil Court of appeal.

but not make final order.

17. The record of cases disposed of by Courts constituted under this Act shall be deposited amongst the records of the principal Civil Court of original jurisdiction in the district in which the property in dispute is situate.

Records of cases where deposited.

18. No claim to any land, or to compensation or damages in respect of any land, sold or otherwise dealt with on account of Government as waste-land, shall be received after the expiration of three years from the date on which such land shall have been delivered by the Government to the purchaser, or otherwise dealt with.

Limitation as to claims to land sold or dealt with.

If within three years after any lands have been delivered by the Government to the purchaser, or otherwise dealt with, any claimant or objector shall prefer a claim to the land so delivered or otherwise dealt with, or an objection to such sale, or to compensation or damages in respect thereof, in the Court constituted under this Act for the district in which the land is situate, and shall show good and sufficient reason for not having preferred his claim or objection to the Collector or other officer as aforesaid within the period limited under section 1 of this Act, such Court shall file the claim or objection, making the claimant or objector plaintiff, and the Collector of the district or other officer as aforesaid (with the like provision as aforesaid if such other officer be the presiding officer of the principal Civil Court of original jurisdiction in the district) the defendant in the suit;

Provision for such claims if preferred within time.

and the foregoing provisions of this Act shall be applicable to the trial and determination of the suit.

The report of the officer employed to give delivery, or to take possession, on the part of Government, of the land sold or otherwise dealt with, shall be conclusive evidence as to the date on which such delivery was made, or possession was taken.

Act XXIII. of 1863.

If claim established, possession not to be given, but compensation.

19. In any case in which the land has been sold, if the Court shall be of opinion that the claim of the claimant is established, the Court shall not award the claimant possession of the land in dispute; but shall order him to receive from the Government treasury, by way of compensation, a sum equal to the price at which the land was sold, in addition to the costs of suit.

When land sold not absolutely, or not sold but otherwise dealt with.

20. If the land shall have been sold subject to any condition or reservation, or shall not have been sold, but shall have been otherwise dealt with on account of the Government, and the Court shall be of opinion that the claim to such land, or the objection of an objector, is established, the Court shall award the claimant or objector to receive such sum, in respect of his interest in such land, as shall be awarded in that behalf under the provisions of the Land-acquisition Act, X. of 1870;*

and thereupon the Local Government shall proceed under the said Act to obtain an award of the value of such interest.

Award under two last sections to be in full satisfaction.

21. An award under any of the provisions of the two last preceding sections shall be in full satisfaction of the claim of the claimant or objector; and shall bar any future claim on his part, in respect to the land in suit, resting on the same cause of action, or on a cause of action which existed prior to the date of the sale or other disposition of the land on account of Government.

Government not barred from awarding compensation for land absolutely sold, though claim be not preferred in time.

22. Nothing in this Act shall be held to prevent the Local Government from awarding to any claimant of waste-land sold on account of Government, on proof to the satisfaction of the Local Government of the claim of such claimant (notwithstanding that he may not have preferred his claim either to the Collector or other officer as aforesaid, or to the proper Court constituted under this Act, within the period prescribed by this Act), such amount as compensation for the said land, within the limit as to amount mentioned in section 19 of this Act, if the land have been sold not subject to any condition or reservation, as to such Local Government may seem proper.

Compensation for land sold subject to condition, if claim proved, though not preferred in time.

23. If the land have been sold subject to any condition or reservation, or have been otherwise disposed of, on account of Government, and any claim to such land, or objection to the sale or other disposition of the land, shall be proved to the satisfaction of the Local Government, although not preferred to the Collector or other officer as aforesaid, or to the Court constituted under this Act, within the period prescribed by this Act, the Local Government may award to such claimant or objector such amount as to such Local Government may appear to be the value of the interest of such claimant or objector in such land.

Interpretation-clause. Number: Gender.

24. Unless the contrary appears from the context, words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number; and words importing the masculine gender shall include females.

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* See Act X. of 1870, s. 2.

ACT XXXI. OF 1863.

Act XXXI. of 1863 & Act II. of 1864.

RECEIVED THE G.-G.'S ASSENT ON THE 16TH DECEMBER 1863.

An Act to give effect to the publication of certain orders and other matters in the Gazette of India.

Preamble.

WHEREAS the Governor-General of India in Council has resolved to publish an official Gazette, to be called the *Gazette of India*, containing such orders, notifications, and other matters as the Governor-General of India in Council shall direct to be inserted therein; It is enacted as follows:—

Publication in *Gazette of India* to have effect of publication in other Gazette in which publication is prescribed by law.

1. When, in any Regulation or Act now in operation, or in any rule having the force of law, it is directed that any order, notification, or other matter, shall be published in the official Gazette of any presidency or place, such order, notification, or other matter, shall be deemed to be duly published in accordance with the requirements of the law, if it be published either in the Gazette in which it would have appeared but for the passing of this Act, or in the *Gazette of India* under the directions of the Governor-General of India in Council.

ACT II. OF 1864.

RECEIVED THE G.-G.'S ASSENT ON THE 12TH FEBRUARY 1864.

An Act to provide for the administration of civil and criminal justice at Aden.

Preamble.

WHEREAS the administration of civil and criminal justice at Aden is now entrusted to the Resident and in subordination to him to the Assistant Resident;* and whereas the criminal law to be administered at Aden is provided for by the Indian Penal Code, but the law to be administered at Aden in civil matters and the precise nature of the criminal and civil jurisdiction of the Resident, and the proper course of procedure in his Court, have never been defined, and it is expedient that they should be provided for; and whereas at present judgments and proceedings of the Resident at Aden are not subject to the superintendence or revision of any Court of justice, except so far as they are subject to appeal to Her Majesty in Council, and it is expedient to provide for the superintendence or revision of certain of such judgments and proceedings by the High Court at Bombay; It is enacted follows:—

Interpretation.

1. The following words and expressions in this Act shall have the meanings hereby assigned to them,, unless there be something in the subject or context repugnant thereto, that is to say:—

the word "Resident" denotes the chief civil officer at Aden appointed by the Government by whatever designation such officer may be called, and includes any Acting Resident or officer acting temporarily as such chief civil officer;

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* Certain words, repealed by Act XVI. of 1891, have here been omitted.

Act II. of 1864.

the words " Assistant Resident " denote any officer appointed by the Government to assist the Resident at Aden by whatever designation such officer may be called, and includes an Acting Assistant ;

the words " Court of the Resident " include the Court of any Assistant Resident ;

words importing the singular number include the plural number, and words importing the plural number include the singular number ;

words importing the masculine gender include females.

CIVIL JURISDICTION.

Administration of civil justice vested in Court of Resident.

2. The administration of civil justice at Aden is hereby declared to be vested in the Court of the Resident.

Resident may try, in first instance, all cases instituted in Court of Resident.

3. The Resident may hear and determine, in the first instance, all cases instituted in the Court of the Resident, of whatever nature, and whatever may be the amount or value of the property in dispute.

Cases triable by Assistant Residents.

4. The Assistant Residents shall have power to hear and determine, in the first instance, all cases instituted in the Court of the Resident, of whatever nature, and whatever may be the amount or value of the property in dispute.

Distribution of cases.

The Resident may, from time to time, direct in what manner the cases instituted in his Court shall be distributed amongst the Assistant Residents.

Appeal from Assistant Resident to Resident.

5. When any suit which relates to immoveable property, or in which the claim, estimated according to any law for the valuation of claims for the time being in force, shall exceed five hundred rupees in value, is tried in the first instance by an Assistant Resident, an appeal shall lie from his decision to the Resident.

An appeal shall also lie to the Resident from all orders passed by an Assistant Resident in the execution of a decree or other order from which, had the order been passed by a Court subordinate to the Court of a District Judge in the Presidency of Bombay, an appeal would have been allowed to the District Judge, as well as from all orders passed by an Assistant Resident in cases other than suits as defined in the Code of Civil Procedure.

Powers of Resident in hearing appeals.

6. For the hearing and determination of appeals from decisions and orders under the last preceding section, the Resident shall (save as herein is otherwise provided) possess and exercise the powers of a District Judge in the Bombay Presidency with reference to the Court subordinate to him.

Cases in which no appeal from Assistant Resident.

7. No appeal shall lie from the decision of an Assistant Resident in any suit not relating to immoveable property, in which the claim estimated as aforesaid shall not exceed five hundred rupees in value ; but the Resident may, within the period allowed for appeal in appealable cases, call for any proceedings of the Assistant Resident at any stage thereof, and may pass such orders thereon as he may think fit.

Power of revision.

No appeal from Resident.

8. No appeal shall lie from any decision or order of the Resident given or made by him, whether in the exercise of his original jurisdiction, or in the exercise of his jurisdiction as a Court of appeal or of revision; but if, in the trial of any suit in which the claim estimated as aforesaid shall not exceed one thousand rupees in value, any question of law or of usage having the force of law, or of the construction of a document affecting the merits of the decision, shall arise, on which the Resident shall entertain doubts, the Resident may, either of his own motion, or on the application of any of the parties to the suit, draw up a statement of the case, and submit it, with his own opinion, for the decision of the High Court of Judicature at Bombay:

Reference of question of law, &c., to High Court.

and if, in the trial of any suit or the hearing of an appeal in any suit in which the claim, estimated as aforesaid, shall exceed one thousand rupees in value, any question of fact or of law, or of usage having the force of law, or of the construction of a document affecting the merits of the decision, shall arise, the Resident shall, on the application of any of the parties to the suit, or he may of his own motion, draw up a statement of the case, and submit it with his own opinion for the decision of the said High Court.

Resident may pass decree contingent upon opinion of High Court, pending which execution not to issue.

9. The Resident may proceed in the case notwithstanding a reference to the High Court, and may pass a decree contingent upon the opinion of the High Court on the point referred; but no execution shall be issued in any case in which a reference shall be made to the High Court, until the receipt of the order of that Court.

Full bench of High Court to decide cases referred.

10. Cases referred for the opinion of the High Court shall be heard by two or more Judges of that Court. Before giving judgment, the High Court may call for and peruse the whole or any part of the proceedings of the Court of the Resident, but shall not be bound so to do.

Parties may appear and be heard in person or by pleader.

11. The parties to the case may appear and be heard in the High Court in person or by a pleader.

Decision of High Court how transmitted.

12. The High Court, when it has heard and considered the case, shall transmit to the Resident a copy of its judgment, under the seal of the Court and the signature of the Registrar; and the Resident shall, on the receipt thereof, proceed to dispose of the case conformably to the decision of the High Court.

Costs of reference to High Court.

13. Costs, if any, consequent on the reference of a case for the opinion of the High Court, shall be costs in the suit.

Resident to have powers of Small Cause Court.

14. When any suit tried in the first instance by the Resident is of such a nature as to be cognizable under Act XLII. of 1860* (*for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter*), the Resident shall, in such suit, have all the powers conferred on, and shall be guided by all the provisions applicable to, a Court of Small Causes constituted within the Presidency of Bombay under the said Act or any other Act for the time being in force,

* Repealed by Act XI. of 1865.

Act II. of 1864. not being an Act relating to Courts of Small Causes in the Presidency-towns: and every Assistant Resident who shall have been vested by the Governor of Bombay in Council with the powers of a Judge of a Court of Small Causes as defined in the said Act XLII. of 1860, or any Act passed in supersession thereof,* shall have the like powers, and be guided by the like provisions in any suit tried by him in the first instance and of a nature cognizable under the said Act XLII. of 1860, anything in section 5 of this Act contained to the contrary notwithstanding.

Administration of civil justice according to spirit and principles of Bombay laws and Regulations.

15. In the administration of civil justice, the Court of the Resident shall be guided by the spirit and principles of the laws and Regulations in force in the Presidency of Bombay, and administered in the Courts of that Presidency not established by Royal Charter, and in the High Court in the exercise of its jurisdiction as a Court of appeal from those Courts.

CIVIL PROCEDURE.

Code of Civil Procedure applied.

16. Except as otherwise provided in this Act, the proceedings in suits and cases of every description between party and party brought in the Court of the Resident shall be regulated by the Code of Civil Procedure, and by any other Act or Acts in relation to civil procedure in force for the time being.

CRIMINAL JURISDICTION.

Administration of criminal justice how vested.

17. The administration of criminal justice at Aden is hereby declared to be vested in the Court of the Resident, save as is herein otherwise provided.

Governor of Bombay may give Assistant Residents certain powers.

18. The Governor of Bombay in Council may invest any Assistant Resident with the powers of a Magistrate, or of a subordinate Magistrate of the first or second class as described in the Code of Criminal Procedure, and such Assistant Resident shall exercise such powers under the said Code, but subject to the provisions of this Act.

Appeal from Assistant Resident to Resident.

19. In every case tried by an Assistant Resident in which the punishment awarded shall be imprisonment for a period exceeding six months, with or without fine, or shall be only a fine exceeding five hundred rupees, an appeal shall lie from the sentence of the Assistant Resident to the Resident.

No appeal shall lie from the sentence of an Assistant Resident in any case in which the punishment awarded shall be imprisonment for a period not exceeding six months with or without fine, or shall be only a fine not exceeding five hundred rupees; but the Resident may in all cases, within the period allowed for appeal in appealable cases, call for any proceedings whatever of the Assistant Resident at any stage thereof, and may pass such order thereon as he may think fit.

Exercise by Resident of powers of Court of Session and of Magistrate.

20. The Resident shall, except as in this Act is otherwise provided, exercise all the powers of a Court of Session as defined in the Code of Criminal Procedure, and he may also, when it shall seem to him proper so to do, exercise

* Act XI. of 1865.

the powers of a Magistrate as defined in the said Code, except in cases triable before himself as a Court of Session. Act II. of 1864.

21. The Resident in the exercise of his powers as a Court of Session shall hold gaol-deliveries at convenient periods, of which due notice shall be given, for the trial of all persons charged with offences punishable under the Indian Penal Code, or under any other law in force for the time being, who may be committed to take their trial before him as a Court of Session :

As Court of Session, to hold gaol-deliveries.

Provided that the Resident shall not have power to try any European British subject charged with an offence punishable with death under the said Code.

Powers of Resident as to trial of European British subjects.

The commitment of any European British subject charged with any such offence shall be made to the High Court at Bombay.

Commitment in certain cases.

In all other cases the commitments made within the limits of the jurisdiction of the Court of the Resident for offences punishable under the Indian Penal Code shall be made to the Court of the Resident.

In other cases.

22. If any European British subject shall be charged in Aden with any offence (other than an offence punishable with death under the Indian Penal Code) which a Justice of the Peace shall not be competent to punish, and there shall be sufficient grounds for committing him for trial, such European British subject shall be committed to the Court of the Resident, and shall be tried by the Resident.

Commitment and trial of such subjects for offences other than those punishable with death.

CRIMINAL PROCEDURE.

23. Save as in this Act otherwise provided, the proceedings in all criminal cases of any description brought in any Court in Aden shall be regulated by the Code of Criminal Procedure.

Proceedings in criminal cases how regulated.

24. Criminal trials before the Resident as a Court of Session, in which a European (whether a British subject or not) or an American is the accused person, or one of the accused persons, shall be by jury, and in such case the jury, if such European or American shall desire it, shall consist of at least one-half Europeans or Americans, if such a jury can be procured.

Trial of European or American by Resident to be by jury.

25. The Resident shall, from time to time, prepare and make out, in alphabetical order, a list of persons residing at Aden, who are, in the judgment of the Resident, qualified, from their education and character, to serve as jurors.

List of jurors.

The list shall contain the names, places of abode, and quality or business of every such person, and shall mention the race to which he belongs.

26. Copies of such list shall be stuck up in the Court of the Resident, and every such copy shall have subjoined to it a notice stating that objections to the list will be heard and determined by the Resident at a time and place mentioned in the notice.

Publication of list.

Act II. of 1864.

27. All the provisions of the Criminal Procedure Code as to jurors and the list of jurors shall be applied, so far as the same can be applied respectively, to jurors and the list of jurors under this Act:

Criminal Procedure Code applied to jurors and lists.

Provided that no person shall be exempt from the liability to serve as a juror on the ground only of his being in the military service:

Military men not exempt.

Provided also that the jurors shall be summoned by the Resident.

28. If, on any trial, sentence of death shall be passed by the Resident, such sentence shall not be carried into execution until it shall have been confirmed by the High Court at Bombay.

Confirmation of sentence of death.

It shall be lawful for the High Court at Bombay, in any case in which it shall seem proper so to do, to commute a sentence of death to a sentence of transportation for life, or for any shorter period not less than seven years.

Power to commute.

29. No appeal shall lie from an order or sentence passed by the Resident in any criminal case.

No appeal from order of Resident.

But it shall be at the discretion of the Resident to reserve any point or points of law for the opinion of the said High Court.

Power to reserve points for High Court.

30. On such point or points of law being so reserved as in the last preceding section mentioned, or on its being certified by the Advocate-General at Bombay that, in his judgment, there is an error in the decision of a point or points of law decided by the Resident, or that a point of law decided by the said Resident should be further considered, the said High Court shall have full power and authority to review the case or such part of it as may be necessary, and finally determine such point of law, and thereupon to pass such judgment and sentence as to the said High Court shall seem right.

Review of case by High Court.

General Rules.

31. The High Court at Bombay shall have power to make and issue general rules for regulating the practice and proceedings of the Court of the Resident, and also to frame forms for every proceeding in the said Court for which the said High Court shall think it necessary that a form should be provided, for keeping all books, entries, and accounts to be kept by the officers, and for the preparation and submission of any statements to be prepared and submitted by the Court of the Resident, and from time to time to alter any such rule or form: provided that such rules and forms shall not be inconsistent with the provisions of this Act, or of any other law in force.

High Court to frame rules for Resident's Court.

ACT III. OF 1864.*

Act III. of 1864.

RECEIVED THE G.-G.'S ASSENT ON THE 12TH FEBRUARY 1864.

An Act to give the Government certain powers with respect to Foreigners.

Preamble.

WHEREAS it is expedient to make provision to enable the Government to prevent the subjects of foreign States from residing or sojourning in British India, or from passing through or travelling therein, without the consent of the Government; It is enacted as follows:—

Interpretation-clause.

1. The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction, that is to say:—

The words "British India" shall denote the territories which are or may become vested in Her Majesty by the Statute 21 and 22 Victoria, chapter 106, entitled "An Act for the better government of India":

The words "Local Government" shall denote the persons authorized to administer the executive government in any part of British India, or the chief executive officer of any part of British India under the immediate administra-

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* Act III. of 1864 has been declared to be in force in the whole of British India, except as regards the Scheduled Districts.—See Act XV. of 1874, s. 3.

It has been declared in force in Upper Burma generally.—See the first part of the Second Schedule to Act XX. of 1886.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely:—

Sindh	See *Gazette of India.*	Aug. 10, 1878, Pt. I., p. 482.
Aden	Ditto	June 28, 1879, Pt. I., p. 434.
West Jalpáiguri, the Western Dvárs, the Western Hills of Dárjiling, the Dárjiling Tarái, and the Damson Sub-division of the Dárjiling District	Ditto	Mar. 5, 1881, Pt. I., p. 74.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	Oct. 22, 1881, Pt. I., p. 504.
The Jhánsi Division	Ditto	Aug. 31, 1878, Pt. I., p. 546.
The scheduled portion of the Mirzápur District	Ditto	May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	May 31, 1879, Pt. I., p. 382.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán	Ditto	Jan. 30, 1886, Pt. I., p. 48.
The District of Lahaul	Ditto	May 1, 1886, Pt. I., p. 301.
The Scheduled Districts of the Central Provinces	Ditto	Dec. 13, 1879, Pt. I., p. 771.
The District of Silhat	Ditto	Oct. 4, 1879, Pt. I., p. 631.

It has been extended, under the same Act, to the following Scheduled Districts, namely:—

Kumáon and Garhwál	See *Gazette of India.*	Nov. 4, 1876, Pt. I., p. 606.
The North-Western Provinces Tarái	Ditto	Sep. 23, 1876, Pt. I., p. 505.

Act III. of 1864.

tion of the Governor-General of India in Council, when such chief executive officer shall, by an order of the Governor-General of India in Council published in the *Gazette of India*, be authorized to exercise the powers vested by this Act in a Local Government:

The word "foreigner" shall denote a person, not being either a natural-born subject of Her Majesty within the meaning of the Statute 3 & 4 William IV., chapter 85, section 81, or a native of British India:

The words "the Magistrate of the District," shall denote the chief officer charged with the executive administration of a district, and exercising the powers of a Magistrate, by whatever designation the chief officer charged with the executive administration is styled, or, in the absence of such officer from the station at which his Court is usually held, the senior officer at the station exercising the powers of a Magistrate as defined in the Code of Criminal Procedure:

The word "vessel" shall include anything made for the conveyance by water of human beings or property.

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number:

Words importing the masculine gender shall include females.

Proof of being foreigner.

2. If a question shall arise whether any person alleged to be a foreigner, and to be subject to the provisions of this Act, is a foreigner or not, or is or is not subject to the provisions of this Act, the onus of proving that such person is not a foreigner, or is not subject to the provisions of this Act, shall lie upon such person.

Government may order foreigner to remove himself.

3. The Governor-General of India in Council may, by writing, order any foreigner to remove himself from British India, or to remove himself therefrom by a particular route to be specified in the order;

and any Local Government may, by writing, make the like order with reference to any foreigner within the jurisdiction of such Government.

Foreigner refusing to remove, or returning without license after removal, may be apprehended and detained.

4. If any foreigner ordered to remove himself from British India, or ordered to remove himself therefrom by a particular route, shall neglect or refuse so to do; or

if any foreigner, having removed himself from British India in consequence of an order issued under any of the provisions of this Act, or having been removed from British India under any of the said provisions, shall wilfully return thereto without a license in writing granted by the Governor-General of India in Council, or by the Local Government under whose order he shall have removed himself or been removed,

such foreigner may be apprehended and detained in safe custody until he shall be discharged therefrom by order of the Governor-General of India in Council or of the Local Government within whose jurisdiction he shall be so apprehended or detained, upon such terms and conditions as the said Governor-General of India in Council or Local Government shall deem sufficient for the peace and security of British India, and of the Allies of Her Majesty, and of the neighbouring Princes and States.

5. Whenever the Governor-General of India in Council shall consider it necessary to take further precautions in respect of foreigners residing or travelling in British India or any part thereof, it shall be lawful for the Governor-General of India in Council, by a notification published in the *Gazette of India*, to order that the provisions of this and the subsequent sections of this Act shall be in force in British India, or in such part thereof as shall be specified in such notification, for such period as shall be therein declared; and thereupon, and for such period, the whole of this Act, including this and the subsequent sections, shall have full force and effect in British India or such part thereof as shall have been so specified.

Governor-General may order provisions of Act to be in force in British India, or in part thereof.

The Governor-General of India in Council may, from time to time, by a notification published as aforesaid, cancel or alter any former notification which may still be in force, or may extend the period declared therein:

Provided that none of the provisions of this or the subsequent sections of this Act shall extend—

Proviso.

to any foreign minister duly accredited by his Government;

to any consul or vice-consul;

to any person under the age of fourteen years; or

to any person in the service of Her Majesty.

6. Every foreigner, on arriving in any part of British India in which all the provisions of this Act are for the time being in force under an order issued as provided in the last preceding section, from any port or place not within British India, or from any port or place within British India where all the provisions of this Act are not in force, shall, if he arrive at a presidency-town, forthwith report himself to the Commissioner of Police of such town, or, if he arrive at any other place, then he shall forthwith report himself to the Magistrate of the district, or to such other officer as shall be appointed to receive such reports by the Governor-General of India in Council or by the Local Government of such place.

Foreigner to report arrival in India in certain cases.

7. The report shall be in writing, and shall be signed by the person reporting himself, and shall specify his name or names, the nation to which he belongs, the place from which he shall have come, the place or places of his destination, the object of his pursuit, and the date of his arrival in such presidency-town or other place.

The report shall be recorded by the officer to whom it is made.

What to be stated in report.

8. The provisions of the last two preceding sections shall not extend to any person being the master or commander of a vessel or employed therein;

but, if any such person shall be in any part of British India in which all the provisions of this Act are for the time being in force, after he shall have ceased to be actually employed in a vessel, he shall forthwith report himself in manner aforesaid.

Foreigners, being masters of vessels or employed therein, when to report.

9. If any foreigner shall neglect to report himself as required by this Act, he may be dealt with in the manner hereinafter provided in respect of foreigners travelling without a license.

Foreigners neglecting to report, how dealt with.

Act III. of 1864.

No foreigner to travel without license.

10. No foreigner shall travel in or pass through any part of British India in which all the provisions of this Act are for the time being in force without a license.

License by whom granted.

11. Licenses under this Act may be granted by the Governor-General of India in Council or by any of the Local Governments, under the signature of a Secretary to the Government of India or to such Local Government, as the case may be, or by such other officers as shall be specially authorized to grant licenses by the Governor-General of India in Council, or by any of the Local Governments.

What to be stated in license.

12. Every such license shall state the name of the person to whom the license is granted, the nation to which he belongs, the district or districts through which he is authorized to pass, or the limits within which he is authorized to travel, and the period (if any) during which the license is intended to have effect.

License may be granted subject to conditions,

13. The license may be granted subject to such conditions as the Governor-General of India in Council or the Local Government may direct, or as the officer granting the license may deem necessary.

and may be revoked.

Any license may be revoked at any time by the Governor-General of India in Council or by the Local Government of any part of British India in which all the provisions of this Act are for the time being in force, and in which the foreigner holding the same may be, or by the officer who granted the license.

Foreigner travelling without, or contrary to conditions of, license may be apprehended.

14. If any foreigner travel in, or attempt to pass through, any part of British India without such license as aforesaid, or beyond the districts or limits mentioned therein, or after such license shall have been revoked, or shall violate any of the conditions therein specified, he may be apprehended without warrant by any officer exercising any of the powers of a Magistrate, or by any European commissioned officer in the service of Her Majesty, or by any member of a volunteer corps enrolled by authority of Government whilst on duty, or by any police-officer.

Procedure upon apprehension.

15. If any person be apprehended by a person not exercising any of the powers of a Magistrate, and not being a police-officer, he shall be delivered over as soon as possible to a police-officer, and forthwith carried before the Magistrate of the district.

Magistrate to report to Government.

Whenever any person shall be apprehended by or taken before the Magistrate of the district, such Magistrate shall immediately report the case to the Local Government to which he is subordinate, and cause the person brought before him to be discharged, or to be conveyed to one of the presidency-towns, or, pending the orders of such Government, to be detained.

Persons apprehended may be admitted to bail.

16. Any person apprehended or detained under the provisions of this Act may be admitted to bail by the Magistrate of the district, or by any officer authorized to grant licenses, and shall be put to as little inconvenience as possible during his detention in custody.

Removal of persons apprehended.

17. The Local Government of any part of British India in which all the provisions of this Act are for the time being in force may order any person apprehended or detained under

the provisions of this Act to remove himself from any such part of British India by sea or by such other route as the said Local Government may direct; or the said Local Government may cause him to be removed from such part of British India by such route and in such manner as to such Local Government shall seem fit.

The Governor-General of India in Council may exercise all the powers given by this section to any Local Government.

Governor-General may prohibit persons not being natural-born subjects from travelling through India without license.

18. The Governor-General of India in Council may by order prohibit any person or any class of persons, not being natural-born subjects of Her Majesty within the meaning of the Statute 3 and 4 William IV., chapter 85, section 81, from travelling in or passing through any part of British India in which all the provisions of this Act may for the time being be in force, and from passing from any part thereof to another without a license to be granted by such officer or officers as shall be specified in the order;

Effect of disobedience.

and if any person so prohibited shall wilfully disobey such order, he may be apprehended without warrant by any of the officers specified in section 14 of this Act, and carried before the Magistrate of the district, and dealt with under the provisions of section 17 in the same manner as if he were a foreigner;

and the Governor-General of India in Council may order such person to be detained in safe custody, or under the surveillance of the police, so long as it may be deemed necessary for the peace and security of British India or any part thereof.

Like power of Local Governments within their respective jurisdictions.

19. The Local Government of any presidency or place in which all the provisions of this Act may for the time being be in force may by order prohibit any person, or any class of persons, not being natural-born subjects of Her Majesty within the meaning of the Statute 3 and 4 William IV., chapter 85, section 81, from travelling in or passing through such presidency or place, or any part thereof, and from passing from any part thereof to another, without a license to be granted by such officer or officers as shall be specified in the order;

Effect of disobedience.

and if any person so prohibited shall wilfully disobey such order, he may be apprehended without warrant by any of the officers specified in section 14 of this Act, and carried before the Magistrate of the district, and dealt with under the provisions of section 17 in the same manner as if he were a foreigner;

and the Local Government may order such person to be detained in safe custody, or under the surveillance of the police, so long as it may be deemed necessary for the peace and security of British India or any part thereof.

Certain officers may board vessels to ascertain whether foreigners are on board.

20. It shall be lawful for the Commissioner of Police, or for the Magistrate of the district, or for any officer appointed to receive reports as mentioned in section 6 of this Act, or for any police-officer under the authority of such Commissioner or Magistrate, to enter any vessel in any port or place within British India in which all provisions of this Act may for the time being be in force, in order to ascertain whether any foreigner bound to report his arrival under the said section 6 of this Act is on board of such vessel;

Act III. of 1864.

and it shall be lawful for such Commissioner of Police, Magistrate, or other officer as aforesaid, to adopt such means as may be reasonably necessary for that purpose ;

and the master or commander of such vessel shall also, before any of the passengers are allowed to disembark, if he shall be required so to do by such Commissioner of Police, Magistrate, or other officer as aforesaid, deliver to him a list in writing of the passengers on board, specifying the ports or places at which they embarked, and the ports or places of their disembarkation or intended disembarkation, and answer to the best of his knowledge all such questions touching the passengers on board the said vessel, or touching those who may have disembarked in any part of British India, as shall be put to him by the Commissioner of Police, Magistrate, or other officer as aforesaid.

Master of vessel to furnish list of passengers, and to give information respecting them.

If any foreigner on board such vessel in any part of British India shall refuse to give an account of his objects of pursuit in India, or if his account thereof shall not be satisfactory, the officer may refuse to allow him to disembark, or he may be dealt with in the same manner as a foreigner travelling in British India without a license.

Foreigner refusing to give account of himself how dealt with.

21. If the master or commander of a vessel shall wilfully give a false answer to any question which by section 20 of this Act he is bound to answer, or shall make any false report, he shall be held to have committed the offence specified in section 177 of the Indian Penal Code.

Penalty for false answer or report.

22. If the master or commander of any vessel shall wilfully neglect or refuse to comply with the requisitions of this Act, he shall, on conviction before the Magistrate of the district or a Justice of the Peace, be liable to a fine not exceeding two thousand rupees.

Penalty for master not complying with requisitions of Act.

23. Whoever intentionally obstructs any officer in the exercise of any of the powers vested in him by this Act shall be held to have committed the offence specified in section 186 of the Indian Penal Code.

Penalty for obstructing officers.

24. All fines imposed under this Act may "be recovered in the manner provided by the law for the time being in force for the recovery of fines imposed by Criminal Courts."*

Fines imposed under Act how recovered.

25. The Governor-General of India in Council, or the Local Government of any part of British India in which this Act may for the time being be in force, may exempt any person, or any class of persons, either wholly or partially, or temporarily or otherwise, from all or any of the provisions of this Act contained in any of the sections subsequent to section 5, and may at any time revoke any such exemption.

Power to exempt from provisions of Act.

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* The words quoted have been substituted for certain words repealed by Act XII. of 1891.

ACT VI. OF 1864.*

Act VI. of 1864.

RECEIVED THE G.-G.'S ASSENT ON THE 18TH FEBRUARY 1864.

An Act to authorize the punishment of Whipping in certain cases.†

Preamble.

WHEREAS it is expedient that in certain cases offenders should be liable, under the provisions of the Indian Penal Code, to the punishment of whipping; It is enacted as follows :—

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* Act VI. of 1864 has been declared to be in force in the whole of British India, except the Scheduled Districts.—See Act XV. of 1874, s. 3.

With the exception of s. 6, it has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely :—

Sindh	See *Gazette of India.*	Aug. 10, 1873, Pt. I., p. 482.
Aden	Ditto	June 28, 1879, Pt. I., p. 434.
West Jalpáiguri, the Western Dvárs, the Western Hills of Dárjiling, the Dárjiling Tarái, and the Damson Sub-division of the Dárjiling District . .	Ditto	Mar. 5, 1881, Pt. I., p. 74.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	Oct. 22, 1881, Pt. I., p. 374.
The Mahál of Angul	Ditto	Feb. 15, 1879, Pt. I., p. 106.
The Jhánsi Division	Ditto	Aug. 21, 1878, Pt. I., p. 546.
Kumáon and Garhwál . . .	Ditto	Nov. 4, 1876, Pt. I., p. 605.
The scheduled portion of the Mirzapur District	Ditto	May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	May 31, 1879, Pt. I., p. 382.
The Districts of Hazára, Peshá-war, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán	Ditto	Jan. 30, 1886, Pt. I., p. 48.
The District of Lahaul . . .	Ditto	May 1, 1886, Pt. I, p. 301.
The Scheduled Districts of the Central Provinces	Ditto	Dec. 13, 1879, Pt. I., p. 771.
Coorg	Ditto	Dec. 28, 1878, Pt. I., p. 747.
The Andaman and Nicobar Islands	Ditto	Mar. 25, 1882, Pt. I., p. 148.
The District of Silhat . . .	Ditto	Oct. 4, 1879, Pt. I., p. 631.
The Districts of Kámrup, Naugong, Darrang, Sibságar, Lakhimpur, Goálpára (including the Eastern Dvárs), and Káchár (excluding the North Káchár Hills)	Ditto	Aug. 24, 1878, Pt. I., p. 533.

It has been extended, under the same Act, to the North-Western Provinces Tarái.—See *Gazette of India*, Sep. 23, 1876, Pt. I., p. 505.

In Lower Burma certain offences mentioned in the schedule to the Lower Burma Gaols Delivery Act are also punishable with whipping.—See Act XVI. of 1886, s. 6, which expires on June 30, 1887, see s. 8 of same Act.

† "I think that the Indian Penal Code and the Code of Criminal Procedure must be read as if the Whipping Act (VI. of 1864) formed a part of the Penal Code from the date of its enactment." *Per* Norman, C. J.: 7 B. L. R. 169.—See, too, 5 Mad. H. C. R. Rulings xviii.

Act VI. of 1864.

Whipping added to punishments described in section 53 of Penal Code.

1. In addition to the punishments described in section 53 of the Indian Penal Code, offenders are also liable to whipping under the provisions of the said Code.

Offences punishable with whipping in lieu of other punishment prescribed by Penal Code.

2. Whoever commits any of the following offences may be punished with whipping in lieu of any punishment to which he may for such offence be liable under the Indian Penal Code, that is to say :—

(1.) Theft as defined in section 378 of the said Code.

(2.) Theft in a building, tent, or vessel, as defined in section 380 of the said Code.

(3.) Theft by a clerk or servant, as defined in section 381 of the said Code.

(4.) Theft after preparation for causing death or hurt, as defined in section 382 of the said Code.

(5.) Extortion by threat, as defined in section 388 of the said Code.

(6.) Putting a person in fear of accusation in order to commit extortion, as defined in section 389 of the said Code.

(7.) Dishonestly receiving stolen property, as defined in section 411 of the said Code.

(8.) Dishonestly receiving property stolen in the commission of a dacoity, as defined in section 412 of the said Code.

(9.) Lurking house-trespass, or house-breaking, as defined in sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this section.

(10.) Lurking house-trespass by night, or house-breaking by night, as defined in sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this section.

On second conviction of offence mentioned in section 2, whipping may be added to other punishment.

3. Whoever, having been previously convicted of any one of the offences specified in the last preceding section, shall again be convicted of the same offence, may be punished with whipping in lieu of, or in addition to, any other punishment to which he may, for such offence, be liable under the Indian Penal Code.

Offences punishable in case of second conviction with whipping in addition to other punishment.

4. Whoever, having been previously convicted of any one of the following offences, shall be again convicted of the same offence, may be punished with whipping in addition to any other punishment to which he may be liable under the Indian Penal Code, that is to say :—

(1.) Giving or fabricating false evidence in such manner as to be punishable under section 193 of the Indian Penal Code.

(2.) Giving or fabricating false evidence with intent to procure conviction of a capital offence, as defined in section 194 of the said Code.

(3.) Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation or imprisonment, as defined in section 195 of the said Code.

(4.) Falsely charging any person with having committed an unnatural offence, as defined in sections 211 and 377 of the Code.

(5.) Assaulting or using criminal force to any woman with intent to outrage her modesty, as defined in section 354 of the said Code.

(6.) Rape, as defined in section 375 of the said Code.

(7.) Unnatural offences, as defined in section 377 of the said Code.

(8.) Robbery or dacoity, as defined in sections 390 and 391 of the said Code.

(9.) Attempting to commit robbery as defined in section 393 of the said Code.

(10.) Voluntarily causing hurt in committing robbery, as defined in section 394 of the said Code.

(11.) Habitually receiving or dealing in stolen property, as defined in section 413 of the said Code.

(12.) Forgery, as defined in section 463 of the said Code.

(13.) Forgery of a document, as defined in section 466 of the said Code.

(14.) Forgery of a document, as defined in section 467 of the said Code.

(15.) Forgery for the purpose of cheating, as defined in section 468 of the said Code.

(16.) Forgery for the purpose of harming the reputation of any person, as defined in section 469 of the said Code.

(17.) Lurking house-trespass, or house-breaking, as defined in sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this section.

(18.) Lurking house-trespass by night, or house-breaking by night, as defined in sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this section.

Juvenile offenders punishable with whipping for offences not punishable with death.

5. Any juvenile offender, who commits any offence which is not by the Indian Penal Code punishable with death, may, whether for a first or any other offence, be punished with whipping in lieu of any other punishment to which he may, for such offence, be liable under the said Code.

When offences specified in section 4 may be punished with whipping in frontier districts.

6. Whenever any Local Government shall, by notification in the official Gazette, have declared the provisions of this section to be in force in any frontier district, or any wild tract of country within the jurisdiction of such Local Go-

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* This section is not in force in Upper Burma, but in lieu thereof a new section has been substituted by Act XX. of 1886, s. 7, sub-s. 1, cl. *c*. The following is the new section :—

6. (*1*) Notwithstanding anything in the foregoing sections of this Act, a person convicted of an offence specified in the schedule to this Act, or of any offence which the Local Government, with the previous sanction of the Governor-General in Council, may add to that schedule, may be punished with whipping, either in lieu of, or in addition to, any other punishment to which he may be liable.

(*2*) The Local Government may, at any time, suspend the operation of this section, in whole or in part, in any district or part of a district, and, with the previous sanction of the Governor-General in Council, remove the suspension of its operation.

Act XV. of 1864.

vernment, any person who shall in such district or tract of country, after such notification as aforesaid, commit any of the offences specified in section 4 of this Act, may be punished with whipping in lieu of any other punishment to which he may be liable under the Indian Penal Code.

7. [*Repealed by Act X. of 1882.*]

8. [*Repealed by Act X. of 1872.*]

9 & 10. [*Repealed by Act XVI. of 1874.*]

11 & 12. [*Repealed by Act X. of 1872.*]

ACT XV. OF 1864.*

RECEIVED THE G.-G.'S ASSENT ON THE 24TH MARCH 1864.

An Act to amend Act VIII. of 1851 (for enabling Government to levy Tolls on Public Roads and Bridges).

Preamble.

WHEREAS by Act VIII. of 1851 (*for enabling Government to levy Tolls on Public Roads and Bridges*), authority was given for the levy of certain rates of toll, not exceeding the rates mentioned in the schedule annexed to that Act; and whereas it is expedient to make certain alterations in respect to the rates in the said schedule mentioned; It is enacted as follows :—

Schedule of Act VIII. of 1851 repealed, and another substituted.

1. In any place to which this Act shall be extended by the Local Government, the schedule to the said Act VIII. of 1851 shall be of no effect except as to any proceedings pending at the time at which this Act shall be so extended, and except as to any rate of toll levied theretofore :

and all the provisions of the said Act, applicable or referring to the rates of toll mentioned in the said schedule, shall be applicable and refer to the rates of toll mentioned in the schedule to this Act annexed, which shall be read with and taken as part of the said Act VIII. of 1851.

Collectors of tolls may compound for tolls leviable under Act VIII. of 1851 or this Act.

2. Any person entrusted with the management of the collection of tolls under Act VIII. of 1851 may, in his discretion, compound for any period not exceeding one year with any person for a certain sum to be paid by such person for himself or for any vehicle or animal kept by him, in lieu of the rates of toll specified in the schedule to the said Act VIII. of 1851 or in the schedule to this Act.

Power to extend Act.

3. The Local Government may extend this Act to any place in which the said Act VIII. of 1851 is in force; and the Local Government of any place in which the said Act VIII. of 1851 is not in force may extend the said Act VIII. of 1851 and this Act to such place.†

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* Repealed locally by Bombay Act III. of 1875.

† Both Acts appear to apply to the Punjab (Barkley, *Non-Regulation Law of the Punjab*, pp. 379, 380), and have been extended to Oudh (*Gazette of India*, 1st July 1865, p. 777), and the Central Provinces (*ibid*, 12th August 1871, p. 611).

Interpretation-clause. "Local Government."

4. For the purposes of this Act, the words "Local Government" shall denote the person authorized by law to administer executive government in any part of the territories vested in Her Majesty by the Statute 21 & 22 Vic., cap. 106, entitled "An Act for the better government of India."

SCHEDULE.

	Rs.	As.	P.
On every four-wheeled carriage	2	0	0
On every two-wheeled carriage	1	0	0
On every ekka	0	4	0

ACT XVII. OF 1864.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

Received the G.-G.'s Assent on the 24th March 1864.

An Act to constitute an Office of Official Trustee.

Preamble.

WHEREAS it is expedient to amend the law relating to Official Trustees, and to constitute an Office of Official Trustee; It is enacted as follows:—

Interpretation.

1. The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the context repugnant to such construction, that is to say:—

"Government."

The word "Government"* shall mean, in relation to the Presidency of Fort William in Bengal, the Governor-General in Council; in relation to the Presidency of Fort St. George, the Governor of Fort St. George in Council; and, in relation to the Presidency of Bombay, the Governor of Bombay in Council:

"High Court."

The expression "High Court" shall mean Her Majesty's High Courts of Judicature at Fort William in Bengal, Fort St. George and Bombay, respectively, in the exercise of their original civil jurisdiction.

"Chief Justice."

The expression "Chief Justice" shall mean the Chief Justice or Acting Chief Justice for the time being of any of the said High Courts.

"Person."

The word "person" shall include a corporation.

Number.

Words importing the singular number shall include the plural, and words importing the plural number shall include the singular.

Gender.

Words importing the masculine gender shall include females.

2. [*Repeal of Act XVII. of 1843.*] *Repealed by Act XIV. of 1870.*

Construction of references to Presidencies.

2.† In this Act references to the Presidency of Fort William in Bengal, the Presidency of Fort St. George, and the Presidency of Bombay, shall, as regards all persons for

* The definition of the word "Government" in s. 1 has been inserted by Act II. of 1890, s. 1.

† S. 2 has been inserted by Act II. of 1890, s. 2.

Act XVII. of 1864.

whom the Governor-General in Council has, for the time being, power to make laws and regulations, be read as references to the Presidency of Bengal, the Presidency of Madras, and the Presidency of Bombay, respectively, as those expressions are severally defined in the law* for the time being in force relating to the office and duties of Administrator-General.

3. [*Official Trustees under Act XVII. of 1843 continued.*] *Repealed by Act XII. of 1891.*

Number of Official Trustees.

4. In each of the Presidencies of Fort William in Bengal, Fort St. George, and Bombay, there shall be an Official Trustee.

Titles.

The said Official Trustees shall be called the Official Trustee of Bengal, the Official Trustee of Madras, and the Official Trustee of Bombay, respectively.

Appointment, suspension, and removal of Official Trustees.

5.† Every Official Trustee appointed under this Act‡ shall be appointed, and may be suspended or removed from his office, by the Government.

Administrator-General may be Official Trustee.

6. The Administrator-General or Officiating Administrator-General for the time being of any of the said Presidencies shall be eligible for the office of Official Trustee of that Presidency.

Security to be given by Official Trustee.

Every Official Trustee appointed under this Act shall give security for the due execution of the duties of his office in such manner and to such amount as the Government§ shall direct.

Leave of absence of Official Trustee.

7. "It shall be lawful for the Government from time to time to grant leave of absence to the Official Trustee, but subject always to such and the like rules as may be for the time being in force as to leave of absence of officers attached to the High Court.

Appointment of person to officiate.

Whenever any Official Trustee shall obtain leave of absence, it shall be lawful for the Government to appoint some person to officiate as Official Trustee,"‖ and such person, while so officiating, shall be subject to the same conditions, and be bound by the same responsibilities as the Official Trustee, and he shall be deemed to be the Official Trustee for the time being under this Act, and shall be liable to give security for the due execution of the duties of his office in like manner as if he had been appointed Official Trustee.

Official Trustee may, with consent be appointed trustee of settlement by grantor, &c.

8. If any person shall be about to grant, assign, or settle any property, moveable or immoveable, of what nature or kind soever, upon or subject to any trust, whether for a charitable purpose or otherwise, it shall be lawful for

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* See Act II. of 1874.

† S. 5 has been substituted for the original by Act II. of 1890, s. 3.

‡ Every person holding the office of Official Trustee at the commencement of Act II. of 1890 is to be deemed to have been appointed under Act XVII. of 1864 as amended by Act II. of 1890.—See Act II. of 1890, s. 8.

§ In s. 6 the word "Government" has been substituted for the original words by Act II. of 1890, s. 4.

‖ In s. 7 the words quoted have been substituted for the original words by Act II. of 1890, s. 5.

such person, with the consent of the Official Trustee, to appoint him, by the deed creating the trust, to be the trustee of such settlement;

and upon such appointment the property so granted, assigned, or settled shall vest in such officer and his successors in office, and shall be held by him and them upon the trust declared and contained in the said deed:

Vesting of property.

Provided always that the consent of the Official Trustee shall be recited in the said deed, and that the deed shall be duly executed by the Official Trustee:

Recital of consent.

Provided also that no trust for any religious purpose shall ever be held by the Official Trustee under this or under any other section of this Act.

9. Every Official Trustee appointed trustee of any property under the last preceding section shall be entitled to receive by way of remuneration in that behalf such sum or sums only as he shall by the deed of settlement be declared to be entitled to receive.

Remuneration of Official Trustee appointed under section 8.

10. If any property is subject to a trust, whether for a charitable purpose or otherwise, and there shall be no trustee willing to act or capable of acting in the trusts thereof who is within the local limits of the ordinary or extraordinary original civil jurisdiction of the High Court, or

Other circumstances under which Official Trustee may be appointed trustee of property.

if property is subject to a trust, and all the trustees or the surviving or continuing trustee, and all the persons beneficially interested in the said trust, shall be desirous that the Official Trustee shall be appointed in the room of such trustees or trustee,

then and in any such case it shall be lawful for the High Court on petition, and with the consent of the Official Trustee, to appoint the Official Trustee to be the trustee of such property;

and upon such appointment such property shall vest in the Official Trustee and his successors in office, and shall be held by him and them upon the same trusts as the same were held previous to such appointment.

11. The Official Trustee shall be entitled by way of remuneration, in respect of all trust-property transferred to him under the last preceding section, to a commission, the rate of which shall be as follows, that is to say,—

Rate of commission under section 10.

on all capital moneys received by him, a commission of one-half per cent. on receiving the same;

on all capital moneys invested by him, a commission of one-half per cent. on investing the same;

on all sums received by him by way of interest or dividends in respect of moneys invested, a commission of three-quarters per cent.;

on all rents collected by him a commission of two-and-a-half per cent.:

Provided that the High Court, by its order appointing the Official Trustee to be trustee of such property, may, for special reasons to be recorded by the Court, direct that the Official Trustee shall be entitled by way of remuneration, in respect of the capital moneys, sums, and rents aforesaid, or any

Act XVII. of 1864.

of them, to a commission at rates or at a rate to be specified in the order, and exceeding the rates or rate hereinbefore in this section prescribed.*

What expenses, &c., commission to cover.

12. The Official Trustee shall defray all the expenses of the establishment necessary for his office, including the provision of office-accommodation, together with all other charges to which the said office shall be subject, except those for which express provision is made by this Act, and except those costs of litigation and the like which a trustee would, under ordinary circumstances, be entitled to pay for out of the trust-moneys in his hand.

The commission to which the Official Trustee shall be entitled is intended to cover all the expenses and risk and responsibility of management, collection, and distribution.

Official Trustee to be sole trustee.

13. It shall in no case be lawful to appoint the Official Trustee to be a trustee along with any other person; but the Official Trustee shall always be sole trustee.

Investment of trust-money.

14. The Official Trustee shall cause all capital moneys received by him to be invested in Government securities, or otherwise as the Court shall direct;

Alteration of improper investment.

and, if in any case the trust-funds, or any part of them, shall, at the time of their vesting in the Official Trustee, be invested otherwise than as provided in the deed or will creating the trust, or than as ordered by the Court, it shall be the duty of the Official Trustee, as soon as he reasonably can, to realize the funds so improperly invested, and to invest the same in Government securities or otherwise as the Court shall direct.

High Court may make orders as to trust-property vested in Official Trustee.

15. The High Court may make any such orders as shall seem to it necessary respecting any trust-property vested in the Official Trustee, or the interest or produce thereof.

All such orders shall be made on petition, unless the Court shall direct a suit to be instituted.

Re-transfer of trust-property to original, or transfer to other, trustee.

16. Nothing in this Act shall prevent the re-transfer of any trust-property, which may have become vested in the Official Trustee, to the original or any subsequently appointed trustee, or to such person as the Court shall direct, unless otherwise provided by the deed or will creating the trust.

Order of appointment of Official Trustee.

17. All orders which shall be made appointing any Official Trustee to act as trustee in virtue of his office shall appoint him by his name of office, and shall authorize the Official Trustee for the time being of the same Presidency to act as Official Trustee of the property to which such order shall relate:

On death, &c., of Official Trustee, property to vest in successor.

and all property and interests which, at the time of the death, resignation, or removal from office of any Official Trustee, shall be vested in him by virtue of such order, shall, upon such death, resignation, or removal, cease to be vested in him, and shall vest in his successor in office immediately upon his appointment thereto;

* This proviso to s. 11 has been added by Act II. of 1890, s. 6.

and all books, papers, and documents kept by such Official Trustee by virtue of his office shall be transferred to and vested in his successor in office.

Transfer of books, &c.

18. All actions, suits, or other proceedings, which shall be commenced by or against any Official Trustee in his official character, may be brought by or against him by his name of office;

Official Trustee to sue or be sued by his name of office.

and no suit, action, or other proceeding already commenced, or which shall be commenced by or against any person as Official Trustee, either alone or jointly with any other person, shall abate by reason of the death, resignation, or removal from office of any such Official Trustee;

Suit not to abate by death, &c.

but the same may, by order of the Court, and upon such terms as to the service of notices or otherwise as the Court may direct, be continued against his successor immediately upon his appointment, in the same manner as if no such death, resignation, or removal had occurred:

Continuance of suit.

Provided that nothing herein contained shall render any such successor personally liable for any costs incurred prior to the order for continuing the action or suit against him, or shall release an Official Trustee who has resigned or been removed from his office, or the heirs, executors, administrators, or representatives of a deceased Official Trustee, from being liable for any such costs.

Liability for prior costs.

19. Every Official Trustee appointed under this Act shall enter into books, to be kept by him for that purpose, separate and distinct accounts of each trust of which he is the trustee, and of all such sums of money and securities for money, goods, and things, as shall come to his hands or to the hands of any person employed by him, or in trust for him, under this Act, and likewise of all payments made by him on account of such trust, and of all debts due by or to the same, specifying the dates of such receipts and payments respectively;

Accounts to be kept by Official Trustee.

which said books shall be kept in the Official Trustee's office, and shall be at all times open for the inspection of the Chief Justice and of any person authorized by him to demand inspection thereof.

Inspection of books.

20. The Chief Justice shall have power, from time to time, to make and alter any general rules and orders consistently with the provisions of this Act—

Chief Justice may make and alter rules and orders for custody of trust-funds, &c.

for the safe custody of the trust-funds and securities which shall come to the hands or possession of the Official Trustee, and

for the remittance to Europe or elsewhere of all sums of money which shall be payable or belong to persons resident in Europe or elsewhere, or in other cases where such remittances shall be required,

and generally for the guidance and government of the Official Trustee in the discharge of his duties;

and may, by such rules and orders, amongst other things, direct what books, accounts, and statements, in addition to those mentioned in this Act, shall be kept by the Official Trustee, and in what form the same shall be,

Act XVII. of 1864.

what entries the same shall contain, and where the same shall be kept, and where and how the funds and securities and other the property belonging to the trust, of which the Official Trustee is the trustee, shall be kept or invested or deposited, and how any remittances thereof shall be made.

Publication of orders, &c.

21. Such orders shall be published in the official Gazette, and it shall be the duty of the several Official Trustees to obey and fulfil the same, and the same shall be a full authority and indemnity for all persons acting in pursuance thereof.

Official Trustee to furnish annual schedules, which shall be filed in High Court.

22. The Official Trustee of each of the said Presidencies shall once in every year, that is to say, on the first day of March, or on such other day as the Chief Justice shall direct, deliver to the Chief Justice—

a true schedule showing the gross amount of all sums of money received or paid by him on account of each trust of which he is the trustee, and the balances during the year ending on the thirty-first day of December next before the day of delivering such schedule, and

a true list of all securities received on account of each of the said trusts during the same period; and also

a true schedule of all trusts which shall have come to an end, or of which the Official Trustee shall have ceased to be the trustee, and the property subject to which shall have been paid or made over to the persons entitled to the same or to new trustees during the same period, specifying the nature and amount or value of such property, and the persons to whom paid or made over.

Filing and inspection of schedules.

The Chief Justice shall cause the said schedules to be filed as record in the High Court; but it shall not be lawful for any person to inspect the same, or to make copies thereof, or of any part thereof, except on an order granted by the Chief Justice permitting him so to do.

Chief Justice to appoint auditors.

23. The Chief Justice shall, from time to time, appoint an auditor or auditors to examine the accounts of the Official Trustee at the time of the delivery of the said schedules, and also at any other time when the Chief Justice shall think fit.

Auditors to examine schedules and accounts of Official Trustee, and to report to Chief Justice.

24. The auditor or auditors shall examine the schedules and accounts, and report to the Chief Justice—

whether they contain a full and true account of every thing which ought to be inserted therein, and

whether the books, which by this Act are, or which by any such general rules and orders as aforesaid shall be, directed to be kept by the Official Trustee, have been duly and regularly kept, and

whether the trust-funds and securities have been duly kept and invested and deposited in the manner prescribed by this Act, or which shall be prescribed by any such rules and orders to be made as aforesaid.

Auditor's power to summon witnesses, and to call for books, &c.

25. Every auditor shall have power—

to summon as well the Official Trustee as any other person or persons whose presence he may think necessary, to attend him from time to time; and

to examine the Official Trustee or other party or parties, if he shall think fit, on oath or solemn affirmation to be by him administered; and

to call for all books, papers, vouchers, and documents which shall appear to him to be necessary for the purposes of the said reference;

and, if the Official Trustee or other person or persons, when summoned, shall refuse or, without reasonable cause, neglect to attend or to produce any book, paper, voucher, or document required, or shall attend and refuse to be sworn or make a solemn affirmation, when by law an affirmation may be substituted for an oath, or shall refuse to be examined, the auditor or auditors shall certify such neglect or refusal in writing to the High Court;

Report to High Court of refusal or neglect to attend, or to produce books, &c.

and every person so refusing or neglecting shall thereupon be punishable in like manner as if such refusal or neglect had been in contempt of the said High Court.

Penalty.

26. The costs and expenses of preparing the said schedules and accounts, and of every such reference and examination as aforesaid, shall be defrayed by all the trust-estates to which such schedules or accounts shall relate, which costs and expenses, and the portion thereof to be contributed by each of the said trust-estates, shall be ascertained and settled by the auditor or auditors, subject to the approval of the Chief Justice, and shall be paid out of the said estates accordingly by the Official Trustee.

Costs of preparing schedules, &c., how paid.

27. If, upon any such reference and examination, the auditor or auditors shall see reason to believe—

Matters to be reported by auditors.

that the said schedules do not contain a true and correct account of the matters therein contained, or which ought to be therein contained, or

that the trust-funds and securities have not been duly kept and invested or deposited in the manner directed by this Act, or which shall be directed by any such rules and orders as aforesaid, or

that the Official Trustee has failed to comply with the provisions and directions of this Act, or of any such rules and orders,

he or they shall report accordingly to the Chief Justice.

28. The Chief Justice may refer every such report as last aforesaid to the consideration of the Advocate-General for the Presidency, who shall thereupon, if he shall think fit, proceed summarily against the defaulter or his personal representative in the High Court by petition for an account, or to compel obedience to this Act or to such rules and orders as aforesaid, or otherwise as he may think fit, in respect of all or any of the trust-estates then or formerly under the charge of such defaulter;

Proceedings upon such report.

and the Court shall have power, upon any such petition, to compel the attendance in Court of the defendant or defendants, and any witnesses who may be thought necessary, and to examine them orally or otherwise as the said Court shall think fit, and to make and enforce such order or orders as the Court shall think just.

Act XVII. of 1864.

Costs upon such proceedings, &c., how defrayed.

29. The costs, including those of the Advocate-General, and of the reference to him, if the same shall be directed by the Court to be paid, shall be defrayed either by the defendant or defendants, or out of the trust-estates rateably as the said Court shall direct;

and, whenever any costs shall be recovered from the defendant or defendants, the same shall be repaid to the estates by which the same shall have been in the first instance contributed, and the Court shall have power to order the Official Trustee or other person or persons, defendants, to receive his or her costs out of the said estates, if it shall think fit.

Effect and execution of orders.

30. Any orders which shall be made by any of the said High Courts shall have the same effect, and be executed in the same manner* as decrees.

Who may apply for order under Act.

31. Any order under this Act may be made on the application of any person beneficially interested in any trust-property, or of any trustee thereof, whether under disability or not.

Executor or administrator may pay to Official Trustee legacy, share, &c., of infant or lunatic.

32. If any infant or lunatic shall be entitled to any gift or legacy, or residue or share thereof, it shall be lawful for the executor or administrator by whom such legacy, residue, or share may be payable or transferable, or the party by whom such gift may be made, or any trustee of such gift, legacy, residue, or share, to pay or transfer the same to the Official Trustee appointed under this Act:

Leave of Court.

Provided that the leave of the High Court to make such payment or transfer shall be first obtained by motion made on petition.

Provisions applied to such property.

Any money or property paid or transferred to the Official Trustee, or vested in him under this section, shall be subject to the same provisions as are contained in this Act as to other property vested in such Official Trustee under the provisions thereof.

Compliance with requisitions for returns.

33.* The Official Trustee shall comply with such requisitions as may be made by the Government for returns and statements, in such form and manner as the Government may deem proper.

Division of the Presidency of Fort William in Bengal into Provinces.

34.* (*1*) Notwithstanding anything in the foregoing provisions of this Act the Governor-General in Council, upon the occurrence of any vacancy in the office of the Official Trustee of Bengal, may, by notification in the Gazette of India—

(*a*) divide the Presidency of Fort William in Bengal into so many Provinces as he thinks fit,

(*b*) define the limits of each of those Provinces, and

(*c*) appoint an Official Trustee for each Province, and, subject to the provisions of this section, the following consequences shall thereupon ensue, namely:—

(i) the office of Official Trustee of Bengal shall cease to exist:

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* Ss. 33 and 34 have been added by Act II. of 1890, s. 7.

(ii) the Official Trustee of a Province shall have the like rights and privileges, and perform the like duties, in the territories and dominions included in the Province as the Official Trustee of Bengal had and performed as Official Trustee therein : Act XVII. of 1864.

(iii) the functions of the Government under this Act shall, as regards the territories and dominions included in the Province, be discharged by the Governor-General in Council :

(iv) the functions of whatsoever kind assigned by the foregoing provisions of this Act to the High Court of Judicature at Fort William in Bengal in respect of the territories and dominions included in a Province shall be discharged by such High Court as the Governor-General in Council may, by notification in the Gazette of India, appoint in this behalf :

(v) in the foregoing provisions of this Act, the word 'Presidency' shall be deemed to include a Province, the expression 'Chief Justice' the Chief Justice, senior Judge, or sole Judge, as the case may be, of a High Court appointed by the Governor-General in Council under clause (iv) of this sub-section, and the expression 'Advocate-General' a Government Advocate or other officer appointed by the Governor-General in Council to discharge for a Province the functions under this Act of an Advocate-General for a Presidency : and,

(vi) generally, the provisions of the foregoing sections and of any other enactment for the time being in force with respect to the Official Trustee of Bengal shall, in relation to a Province, be construed, so far as may be, to apply to the Official Trustee appointed for the Province under this section.

(*2*) Any proceeding which was commenced before the publication of the notification dividing the Presidency of Fort William in Bengal into Provinces, and to or in which the Official Trustee of Bengal in his representative character was a party or was otherwise concerned, shall be continued as if the notification had not been published, and the Official Trustee of the Province in which the Town of Calcutta is comprised shall, for the purposes of the proceeding, be deemed to be the successor in office of the Official Trustee of Bengal, and shall hold and execute the trusts of which immediately before the publication of the notification the Official Trustee of Bengal was trustee in all respects as if he were such successor.

(*3*) The Court of the Recorder of Rangoon shall be deemed to be a High Court for the purposes of clause (iv) of sub-section (*1*).

Act III. of 1865.

ACT III. OF 1865.*

RECEIVED THE G.-G.'S ASSENT ON THE 14TH FEBRUARY 1865.

An Act relating to the rights and liabilities of Common Carriers.

WHEREAS it is expedient, not only to enable common carriers to limit their liability for loss of or damage to property delivered to them to be carried, but also to declare their liability for loss of or damage to such property occasioned by the negligence or criminal act of themselves, their servants, or agents; It is enacted as follows :—

Preamble.

Short title.

1. This Act may be cited as "The Carriers' Act, 1865."

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* Act III. of 1865 has been declared to be in force in the whole of British India except as regards the Scheduled Districts.—See Act XV. of 1874, s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely :—

Sindh	See *Gazette of India*	. Dec. 4, 1880, Pt. I., p. 672.
West Jalpáiguri, the Western Hills of Dárjeeling, the Dárjeeling Tarái, and the Damson Sub-division of the Dárjeeling District . .	Ditto	. Mar. 5, 1881, Pt. I., p. 74.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum . .	Ditto	. Oct. 22, 1881, Pt. I., p. 504.
The Jhánsi Division .	Ditto	. Aug. 31, 1878, Pt. I., p. 546.
Kumáon and Garhwál	Ditto	. Nov. 4, 1876, Pt. I., p. 605.
The scheduled portion of the Mirzápur District	Ditto	. May 31, 1878, Pt. I., p. 383.
Jaunsar Bawár . . .	Ditto	. May 31, 1878, Pt. I., p. 382.
The District of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán	Ditto	. Jan. 30, 1886, Pt. I., p. 48.
The Scheduled Districts of the Central Provinces	Ditto	. Dec. 13, 1879, Pt. I., p. 771.
The District of Silhat	Ditto	. Oct. 4, 1879, Pt. I., p. 631.

It has been extended, under the same Act, to the following Scheduled Districts, namely :—

The North-Western Provinces Tarái .	See *Gazette of India*	. Sep. 23, 1876, Pt. I., p. 505.
Ajmere and Merwára	Ditto	. Oct. 20, 1877, Pt. I., p. 605.

It has been declared, under the same Act, not to be in force in the Scheduled District of Lahaul.—See *Gazette of India*, May 1, 1886, Pt. I., p. 301.

It has been repealed as to carriers by rail by Act IV. of 1879.

It has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886.

Interpretation-clause.

2. In this Act, unless there be something repugnant in the subject or context,—

"Common carrier" denotes a person, other than the Government,* engaged in the business of transporting for hire property from place to place, by land or inland navigation, for all persons indiscriminately :

"Person" includes any association or body of persons, whether incorporated or not :

Words in the singular number include the plural, and words in the plural include the singular.

Carriers not liable for loss of certain goods above 100 rupees in value, unless delivered as such.

3. No common carrier shall be liable for the loss of or damage to property delivered to him to be carried exceeding in value one hundred rupees and of the description contained in the schedule to this Act, unless the person delivering such property to be carried, or some person duly authorized in that behalf, shall have expressly declared, to such carrier or his agent, the value and description thereof.†

For carrying such property payment may be required at fixed rates.

4. Every such carrier may require payment for the risk undertaken in carrying property exceeding in value one hundred rupees and of the description aforesaid, at such rate of charge as he may fix :

Proviso.

Provided that, to entitle such carrier to payment at a rate higher than his ordinary rate of charge, he shall have caused to be exhibited, in the place where he carries on the business of receiving property to be carried, notice of the higher rate of charge required, printed or written in English and in the vernacular language of the country wherein he carries on such business.

Person entitled to recover in respect of property lost or damaged may also recover money paid for its carriage.

5. In case of the loss of or damage to property exceeding in value one hundred rupees and of the description aforesaid, delivered to such carrier to be carried, when the value and description thereof shall have been declared, and payment shall have been required in manner provided for by this Act, the person entitled to recover in respect of such loss or damage shall also be entitled to recover any money actually paid to such carrier in consideration of such risk as aforesaid.

In respect of what property liability of carrier not limited by public notice.

6. The liability of any common carrier for the loss of or damage to any property delivered to him to be carried, not being of the description contained in the schedule to this Act, shall not be deemed to be limited or affected by any public notice ;

Carriers, with certain exceptions, may limit liability by special contract.

but any such carrier, not being the owner of a railroad or tramroad constructed under the provisions of the Land-acquisition Act, 1870,‡ may, by special contract, signed by the owner of such property so delivered as last aforesaid, or by some person duly authorized in that behalf by such owner, limit his liability in respect of the same.

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* See 3 N.-W. P. H. C. R. 198.

† "The earlier sections extend to India the principle embodied in the English Statute 11 Geo. IV. & 1 Wm. IV., c. 68."—*Statement of Objects and Reasons.*

‡ See Act X. of 1870, s. 2.

Act III. of 1865.

Liability of owner of railroad made under Act X. of 1870, not limited by special contract.

7. The liability of the owner of any railroad or tramroad constructed under the provisions of the said Land-acquisition Act,* for the loss of or damage to any property delivered to him to be carried, not being of the description contained in the schedule to this Act, shall not be deemed to be limited or affected by any special contract;

but the owner of such railroad or tramroad shall be liable for the loss of or damage to property delivered to him to be carried only when such loss or damage shall have been caused by negligence or a criminal act on his part or on that of his agents or servants.

When such owner answerable for loss or damage.

Common carrier liable for loss or damage caused by neglect or fraud.

8. Notwithstanding anything hereinbefore contained, every common carrier shall be liable to the owner for loss of or damage to any property delivered to such carrier to be carried, where such loss or damage shall have arisen from the negligence or a criminal act of the carrier or any of his agents or servants.

Suitors against carriers for loss not required to prove negligence, &c.

9. In any suit brought against a common carrier for the loss, damage, or non-delivery of goods entrusted to him for carriage, it shall not be necessary for the plaintiff to prove that such loss, damage, or non-delivery was owing to the negligence or criminal act of the carrier, his servants, or agents.†

Saving of provisions of Act XVIII. of 1854.

10. Nothing in this Act shall affect the provisions contained in the ninth, tenth, and eleventh sections of Act No. XVIII. of 1854‡ (*relating to Railways in India*).

SCHEDULE.

Gold and silver coin
Gold and silver in a manufactured or unmanufactured state.
Precious stones and pearls.
Jewellery.
Time-pieces of any description.
Trinkets.
Bills and hundis.
Currency-notes of the Government of India, or notes of any Banks, or securities for payment of money, English or foreign.
Stamps and stamped paper.
Maps, prints, and works of art.
Writings.
Title-deeds.
Gold or silver plate, or plated articles.
Glass.
China.
Silk in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials.
Shawls and lace.
Cloths and tissues embroidered with the precious metals, or of which such metals form part.
Articles of ivory, ebony, or sandal-wood.

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* See Act X. of 1870, s. 2.

† This is in accordance with the English common-law.—See *Ross* v. *Hill*, 2 Com. B. 890; *Richard* v. *Lond., Brighton, & S. C. Ry. Co.*, 7 Com. B. 839.

‡ This Act has been repealed by the Indian Railways Act, 1879, which declares that nothing in Act III. of 1865 shall apply to carriers by railway.—See Act IV. of 1879, s. 2. S. 10 might therefore have been repealed.

ACT X. OF 1865.*

Act X. of 1865.

INDIAN SUCCESSION ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 16TH MARCH 1865.

An Act to amend and define the law of Intestate and Testamentary Succession in British India.

WHEREAS it is expedient to amend and define the rules of law applicable to Intestate and Testamentary Succession in British India; It is enacted as follows :—

Preamble.

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as "The Indian Succession Act, 1865."

Act to constitute law of British India in cases of intestate or testamentary succession.

2. Except as provided by this Act or by any other law for the time being in force, the rules herein contained shall constitute the law of British India applicable to all cases of intestate or testamentary succession.†

Interpretation-clause.

3.‡ In this Act, unless there be something repugnant in the subject or context,—

Words importing the singular number include the plural; words importing the plural number include the singular; and words importing the male sex include females :

"Person" includes any company or association, or body of persons whether incorporated or not :

"Year" and "month" respectively mean a year and month reckoned according to the British calendar :

"Immoveable property" includes land, incorporeal tenements, and things attached to the earth, or permanently fastened to anything which is attached to the earth :

"Moveable property" means property of every description except immoveable property :

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* Act X. of 1865 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	See *Gazette of India*. Oct. 22, 1881, Pt. I., p. 504.
The North-Western Provinces Tarái...	Ditto ... Sep. 23, 1876, Pt. I., p. 505.

It has been declared in force in Upper Burma generally.—See the first part of the Second Schedule to Act XX. of 1886.

† See 12 B. L. R. 427.

‡ Compare Act V. of 1881, s. 3.

Act X. of 1865.

"Province" includes any division of British India having a Court of the last resort:

"British India" means the territories which are or may become vested in Her Majesty or Her Successors by the Statute 21 & 22 Vic., cap. 106 (*an Act for the better Government of India*):*

"District Judge" means the Judge of a principal Civil Court of original jurisdiction:

"Minor"† means any person who shall not have completed the age of eighteen years, and "minority" means the status of such person:

"Will" means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death:

"Codicil" means an instrument made in relation to a will, and explaining, altering, or adding to its dispositions. It is considered as forming an additional part of the will:

"Probate" means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator:

"Executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided:

"Administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor:

And in every part of British India to which this Act shall extend, "Local Government" shall mean the person authorized by law to administer executive government in such part; and

"High Court" shall mean the highest Civil Court of Appeal therein, and for the purposes of sections 242, 242A, 246A, and 277A, shall include the Court of the Recorder of Rangoon.‡

Interests and powers not acquired nor lost by marriage.

4. No person shall, by marriage, acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property, which he or she could have done if unmarried.§

PART II.

OF DOMICILE.

Law regulating succession to deceased person's immoveable and moveable property respectively.

5. Succession to the immoveable property in British India of a person deceased is regulated by the law of British India, wherever he may have had his domicile at the time of his death.

Succession to the moveable property of a person deceased is regulated by the law of the country in which he had his domicile at the time of his death.

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* Here certain words, repealed by Act XII. of 1891, have been omitted.

† See 1 B. L. R., O. C. J., 13; Act IX. of 1875, s. 3.

‡ See Act XIII. of 1875, s. 1.

§ See 8 B. L. R. 372. "This section shall not apply, and shall be deemed never to have applied, to any marriage, one or both of the parties to which professed, at the time of the marriage, the Hindu, Muhammadan, Buddhist, Sikh, or Jaina religion."—Act III. of 1874, s. 2, last para.

Illustrations.

(*a.*) A, having his domicile in British India, dies in France, leaving moveable property in France, moveable property in England, and property, both moveable and immoveable, in British India. The succession to the whole is regulated by the law of British India.

(*b.*) A, an Englishman, having his domicile in France, dies in British India, and leaves property, both moveable and immoveable, in British India. The succession to the moveable property is regulated by the rules which govern, in France, the succession to the moveable property of an Englishman dying domiciled in France, and the succession to the immoveable property is regulated by the law of British India.

One domicile only affects succession to moveables.

6. A person can only have one domicile for the purpose of succession to his moveable property.

Domicile of origin of person of legitimate birth.

7. The domicile of origin of every person of legitimate birth is in the country in which, at the time of his birth, his father was domiciled: or, if he is a posthumous child, in the country in which his father was domiciled at the time of the father's death.

Illustration.

At the time of the birth of A, his father was domiciled in England. A's domicile of origin is in England, whatever may be the country in which he was born.

Domicile of origin of illegitimate child.

8. The domicile of origin of an illegitimate child is in the country in which, at the time of his birth, his mother was domiciled.

Continuance of domicile of origin.

9. The domicile of origin prevails until a new domicile has been acquired.

Acquisition of new domicile.

10. A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin.

Explanation.—A man is not to be considered as having taken up his fixed habitation in British India merely by reason of his residing there in Her Majesty's civil or military service, or in the exercise of any profession or calling.

Illustrations.

(*a.*) A, whose domicile of origin is in England, proceeds to British India, where he settles as a barrister or a merchant, intending to reside there during the remainder of his life. His domicile is now in British India.

(*b.*) A, whose domicile is in England, goes to Austria, and enters the Austrian service, intending to remain in that service. A has acquired a domicile in Austria.

(*c.*) A, whose domicile of origin is in France, comes to reside in British India under an engagement with the British Indian Government for a certain number of years. It is his intention to return to France at the end of that period. He does not acquire a domicile in British India.

(*d.*) A, whose domicile is in England, goes to reside in British India for the purpose of winding up the affairs of a partnership which has been dissolved, and with the intention of returning to England as soon as that purpose is accomplished. He does not, by such residence, acquire a domicile in British India, however long the residence may last.

(*e.*) A, having gone to reside in British India under the circumstances mentioned in the last preceding illustration, afterwards alters his intention and takes up his fixed habitation in British India. A has acquired a domicile in British India.

(*f.*) A, whose domicile is in the French Settlement of Chandernagore, is compelled by political events to take refuge in Calcutta, and resides in Calcutta for many years in the hope of such political changes as may enable him to return with safety to Chandernagore. He does not, by such residence, acquire a domicile in British India.

Act X. of 1865.

(*g*.) A, having come to Calcutta under the circumstances stated in the last preceding illustration, continues to reside there after such political changes have occurred as would enable him to return with safety to Chandernagore, and he intends that his residence in Calcutta shall be permanent. A has acquired a domicile in British India.

Special mode of acquiring domicile in British India.

11. Any person may acquire a domicile in British India by making and depositing in some office in British India (to be fixed by the Local Government)* a declaration in writing under his hand of his desire to acquire such domicile, provided that he shall have been resident in British India for one year immediately preceding the time of his making such declaration.

Domicile not acquired by residence as representative of foreign Government, or as part of his family.

12. A person who is appointed by the Government of one country to be its ambassador, consul, or other representative in another country, does not acquire a domicile in the latter country by reason only of residing there in pursuance of his appointment; nor does any other person acquire such domicile by reason only of residing with him as part of his family or as a servant.

Continuance of new domicile.

13. A new domicile continues until the former domicile has been resumed, or another has been acquired.

Minor's domicile.

14. The domicile of a minor follows the domicile of the parent from whom he derived his domicile of origin.

Exception.—The domicile of a minor does not change with that of his parent, if the minor is married, or holds any office or employment in the service of Her Majesty, or has set up, with the consent of the parent, in any distinct business.

Domicile acquired by woman on marriage.

15. By marriage a woman acquires the domicile of her husband, if she had not the same domicile before.

Wife's domicile during marriage.

16. The wife's domicile during the marriage follows the domicile of her husband.

Exception.—The wife's domicile no longer follows that of her husband if they be separated by the sentence of a competent Court, or if the husband is undergoing a sentence of transportation.

Minor's acquisition of new domicile.

17. Except in the cases above provided for, a person cannot, during minority, acquire a new domicile.

Lunatic's acquisition of new domicile.

18. An insane person cannot acquire a new domicile in any other way than by his domicile following the domicile of another person.

Succession to moveable property in British India, in absence of proof of domicile elsewhere.

19. If a man dies leaving moveable property in British India, in the absence of proof of any domicile elsewhere, succession to the property is regulated by the law of British India.

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* See, as to Oudh, *Gazette of India*, 15th July 1865, p. 813; as to British Burma, *ibid*, 29th July 1865, p. 845.

PART III.*

Act X. of 1865.

OF CONSANGUINITY.

Kindred or consanguinity.

20. Kindred or consanguinity is the connexion or relation of persons descended from the same stock or common ancestor.

Lineal consanguinity.

21. Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other as between a man and his father, grandfather, and great-grandfather, and so upwards in the direct ascending line; or between a man, his son, grandson, great-grandson, and so downwards in the direct descending line.

Every generation constitutes a degree, either ascending or descending.

A man's father is related to him in the first degree, and so likewise is his son; his grandfather and grandson in the second degree; his great-grandfather and great-grandson in the third.

Collateral consanguinity.

22. Collateral consanguinity is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other.

For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased, it is proper to reckon upwards from the person deceased to the common stock, and then downwards to the collateral relative, allowing a degree for each person, both ascending and descending.

Persons held for purpose of succession to be similarly related to deceased.

23. For the purpose of succession, there is no distinction between those who are related to a person deceased through his father, and those who are related to him through his mother;

nor between those who are related to him by the full blood, and those who are related to him by the half blood;

nor between those who were actually born in his lifetime, and those who, at the date of his death, were only conceived in the womb, but who have been subsequently born alive.

Mode of computing degrees of kindred.

24. In the annexed table of kindred, the degrees are computed as far as the sixth, and are marked by numeral figures.

The person whose relatives are to be reckoned, and his cousin-german or first cousin, are, as shown in the table, related in the fourth degree; there being one degree of ascent to the father, and another to the common ancestor, the grandfather; and from him one of descent to the uncle, and another to the cousin-german; making in all four degrees.

A grandson of the brother and a son of the uncle, *i. e.*, a great-nephew and a cousin-german, are in equal degree, being each four degrees removed.

A grandson of a cousin-german is in the same degree as the grandson of a great-uncle, for they are both in the sixth degree of kindred.

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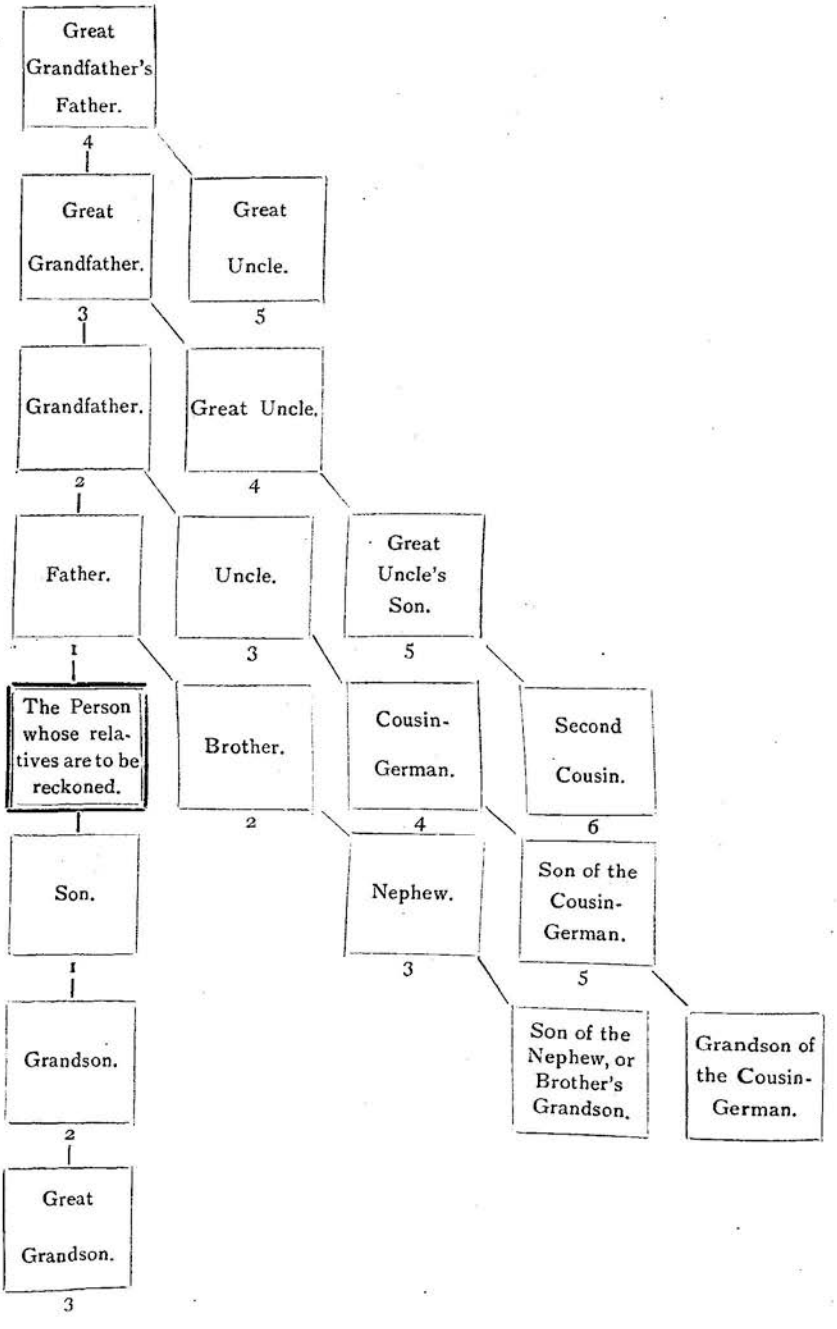
* This Part does not apply to Parsis.—See Act XXI. of 1865, s. 8.

Act X. of 1865.

TABLE OF CONSANGUINITY.



PART IV.*

OF INTESTACY.

As to what property deceased considered to have died intestate.

25. A man is considered to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect.

Illustrations.

(*a.*) A has left no will. He has died intestate in respect of the whole of his property.

(*b.*) A has left a will, whereby he has appointed B his executor; but the will contains no other provisions. A has died intestate in respect of the distribution of his property.

(*c.*) A has bequeathed his whole property for an illegal purpose. A has died intestate in respect of the distribution of his property.

(*d.*) A has bequeathed 1,000*l.* to B, and 1,000*l.* to the eldest son of C, and has made no other bequest; and has died leaving the sum of 2,000*l.* and no other property. C died before A without having ever had a son. A has died intestate in respect of the distribution of 1,000*l.*

Devolution of such property.

26. Such property devolves upon the wife or husband, or upon those who are of the kindred of the deceased, in the order and according to the rules herein prescribed.

Explanation.—The widow is not entitled to the provision hereby made for her, if by a valid contract made before her marriage she has been excluded from the distributive share of her husband's estate.

Where intestate has left widow and lineal descendants, or widow and kindred only, or widow and no kindred.

27. Where the intestate has left a widow, if he has also left any lineal descendants, one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules herein contained.

If he has left no lineal descendant, but has left persons who are of kindred to him, one-half of his property shall belong to his widow, and the other half shall go to those who are of kindred to him, in the order and according to the rules herein contained.

If he has left none who are of kindred to him, the whole of his property shall belong to his widow.

Where intestate has left no widow, and where he has left no kindred.

28. Where the intestate has left no widow, his property shall go to his lineal descendants or to those who are of kindred to him, not being lineal descendants, according to the rules herein contained; and if he has left none who are of kindred to him, it shall go to the Crown.

PART V.†

OF THE DISTRIBUTION OF AN INTESTATE'S PROPERTY.

(*a.*) *Where he has left lineal descendants.*

Rules of distribution.

29. The rules for the distribution of the intestate's property (after deducting the widow's share, if he has left a widow), amongst his lineal descendants are as follows :—

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* This Part (excepting s. 25) does not apply to Parsis.—See Act XXI. of 1865, s. 8.

† This Part does not apply to Parsis.—See Act XXI. of 1865, s. 8.

Act X. of 1865.

30. Where the intestate has left surviving him a child or children, but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child if there be only one, or shall be equally divided among all his surviving children.

Where intestate has left child or children only.

31. Where the intestate has not left surviving him any child, but has left a grandchild or grandchildren, and no more remote descendant through a deceased grandchild, the property shall belong to his surviving grandchild, if there be only one, or shall be equally divided among all his surviving grandchildren.

Where intestate has left no child, but grandchild or grandchildren.

Illustrations.

(*a.*) A has three children, and no more: John, Mary, and Henry. They all die before the father, John leaving two children, Mary three, and Henry four. Afterwards A dies intestate, leaving those nine grandchildren and no descendant of any deceased grandchild. Each of his grandchildren shall have one-ninth.

(*b.*) But if Henry has died leaving no child, then the whole is equally divided between the intestate's five grandchildren, the children of John and Mary.

(*c.*) A has two children, and no more: John and Mary. John dies before his father, leaving his wife pregnant. Then A dies, leaving Mary surviving him, and in due time a child of John is born. A's property is to be equally divided between Mary and such posthumous child.

32. In like manner the property shall go to the surviving lineal descendants who are nearest in degree to the intestate, where they are all in the degree of great-grandchildren to him, or are all in a more remote degree.

Where intestate has left only great-grandchildren or remoter lineal descendants.

33. If the intestate has left lineal descendants who do not all stand in the same degree of kindred to him, and the persons through whom the more remote are descended from him are dead, the property shall be divided into such a number of equal shares as may correspond with the number of the lineal descendants of the intestate who either stood in the nearest degree of kindred to him at his decease, or, having been of the like degree of kindred to him, died before him, leaving lineal descendants who survived him; and

Where intestate leaves lineal descendants not all in same degree of kindred to him and those through whom the more remote descent are dead.

one of such shares shall be allotted to each of the lineal descendants who stood in the nearest degree of kindred to the intestate at his decease; and

one of such shares shall be allotted in respect of each of such deceased lineal descendants; and

the share allotted in respect of each of such deceased lineal descendants shall belong to his surviving child or children or more remote lineal descendants, as the case may be; such surviving child and children or more remote lineal descendants always taking the share which his or their parent or parents would have been entitled to respectively if such parent or parents had survived the intestate.

Illustrations.

(*a.*) A had three children, John, Mary, and Henry; John died leaving four children, and Mary died leaving one, and Henry alone survived the father. On the death of A intestate, one-third is allotted to Henry, one-third to John's four children, and the remaining third to Mary's one child.

(*b.*) A left no child, but left eight grandchildren, and two children of a deceased grandchild. The property is divided into nine parts, one of which is allotted to each grandchild; and the remaining one-ninth is equally divided between the two great-grandchildren.

(*c.*) A has three children, John, Mary, and Henry. John dies leaving four children, and one of John's children dies leaving two children. Mary dies leaving one child. A afterwards dies intestate. One-third of his property is allotted to Henry; one-third to Mary's child; and one-third is divided into four parts, one of which is allotted to each of John's three surviving children, and the remaining part is equally divided between John's two grandchildren.

(*b.*) *Where the Intestate has left no lineal Descendants.*

34. Where an intestate has left no lineal descendants, the rules for the distribution of his property (after deducting the widow's share, if he has left a widow) are as follows:—

Rules of distribution where intestate has left no lineal descendants.

Where intestate's father living.

35. If the intestate's father be living, he shall succeed to the property.

Where intestate's father dead, but his mother, brothers, and sisters living.

36. If the intestate's father is dead, but the intestate's mother is living, and there are also brothers or sisters of the intestate living, and there is no child living of any deceased brother or sister, the mother and each living brother or sister shall succeed to the property in equal shares.

Illustration.

A dies intestate survived by his mother and two brothers of the full blood, John and Henry, and a sister Mary, who is the daughter of his mother, but not of his father. The mother takes one-fourth, each brother takes one-fourth, and Mary, the sister of half-blood, takes one-fourth.

Where intestate's father dead, and his mother, a brother or sister, and children of any deceased brother or sister, living.

37. If the intestate's father is dead, but the intestate's mother is living, and if any brother or sister, and the child or children of any brother or sister who may have died in the intestate's lifetime, are also living, then the mother and each living brother or sister, and the living child or children of each deceased brother or sister, shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Illustration.

A, the intestate, leaves his mother, his brothers John and Henry, and also one child of a deceased sister Mary, and two children of George, a deceased brother of the half-blood, who was the son of his father, but not of his mother. The mother takes one-fifth, John and Henry each take one-fifth, the child of Mary takes one-fifth, and the two children of George divide the remaining one-fifth equally between them.

Where intestate's father dead, and his mother and children of any deceased brother or sister living.

38. If the intestate's father is dead, but the intestate's mother is living, and the brothers and sisters are all dead, but all or any of them have left children who survived the intestate, the mother and the child or children of each deceased brother or sister shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Act X of 1865.

Illustration.

A, the intestate, leaves no brother or sister, but leaves his mother and one child of a deceased sister Mary, and two children of a deceased brother George. The mother takes one-third, the child of Mary takes one-third, and the children of George divide the remaining one-third equally between them.

Where intestate's father dead, but his mother living, and no brother, nor sister, nor nephew.

39. If the intestate's father is dead, but the intestate's mother is living, and there is neither brother nor sister, nor child of any brother or sister of the intestate, the property shall belong to the mother.

40. Where the intestate has left neither lineal descendant, nor father, nor mother, the property is divided equally between his brothers and sisters and the child or children of such of them as may have died before him, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Where intestate has left neither lineal descendant, nor father, nor mother.

41. If the intestate left neither lineal descendant, nor parent, nor brother, nor sister, his property shall be divided equally among those of his relatives who are in the nearest degree of kindred to him.

Where intestate has left neither lineal descendant, nor parent, nor brother, nor sister.

Illustrations.

(*a.*) A, the intestate, has left a grandfather and a grandmother, and no other relative standing in the same or a nearer degree of kindred to him. They being in the second degree, will be entitled to the property in equal shares, exclusive of any uncle or aunt of the intestate, uncles and aunts being only in the third degree.

(*b.*) A, the intestate, has left a great-grandfather, or great-grandmother, and uncles and aunts, and no other relative standing in the same or a nearer degree of kindred to him. All of these, being in the third degree, shall take equal shares.

(*c.*) A, the intestate, left a great-grandfather, an uncle, and a nephew, but no relative standing in a nearer degree of kindred to him. All of these, being in the third degree, shall take equal shares.

(*d.*) Ten children of one brother or sister of the intestate, and one child of another brother or sister of the intestate, constitute the class of relatives of the nearest degree of kindred to him. They shall each take one-eleventh of the property.

42. Where a distributive share in the property of a person who has died intestate shall be claimed by a child, or any descendant of a child, of such person, no money, or other property which the intestate may, during his life, have paid, given, or settled to, or for the advancement of, the child by whom or by whose descendant the claim is made, shall be taken into account in estimating such distributive share.

Children's advancements not brought into hotchpot.

PART VI.

OF THE EFFECT OF MARRIAGE AND MARRIAGE-SETTLEMENTS ON PROPERTY.

43.* The husband surviving his wife has the same rights in respect of her property, if she die intestate, as the widow has in respect of her husband's property, if he die intestate.

Rights of widower and widow respectively.

* This section does not apply to Parsis.—See Act XXI. of 1865, s. 8.

Act X of 1865.

44. If a person whose domicile is not in British India marries in British India a person whose domicile is in British India, neither party acquires by the marriage any rights in respect of any property of the other party not comprised in a settlement made previous to the marriage, which he or she would not acquire thereby if both were domiciled in British India at the time of the marriage.

Effect of marriage between person domiciled, and one not domiciled, in British India.

45. The property of a minor may be settled in contemplation of marriage, provided the settlement be made by the minor with the approbation of the minor's father, or if he be dead or absent from British India, with the approbation of the High Court.

Settlement of minor's property in contemplation of marriage.

PART VII.*

OF WILLS AND CODICILS.

Persons capable of making wills.

46. Every person of sound mind and not a minor may dispose of his property by will.

Explanation 1.—A married woman may dispose by will of any property which she could alienate by her own act during her life.

Explanation 2.—Persons who are deaf, or dumb, or blind, are not thereby incapacitated for making a will if they are able to know what they do by it.

Explanation 3.—One who is ordinarily insane may make a will during an interval in which he is of sound mind.

Explanation 4.—No person can make a will while he is in such a state of mind, whether arising from drunkenness, or from illness, or from any other cause, that he does not know what he is doing.

Illustrations.

(*a.*) A can perceive what is going on in his immediate neighbourhood, and can answer familiar questions, but has not a competent understanding as to the nature of his property or the persons who are of kindred to him, or in whose favour it would be proper that he should make his will. A cannot make a valid will.

(*b.*) A executes an instrument purporting to be his will, but he does not understand the nature of the instrument, nor the effect of its provisions. This instrument is not a valid will.

(*c.*) A, being very feeble and debilitated, but capable of exercising a judgment as to the proper mode of disposing of his property, makes a will. This is a valid will.

Testamentary guardian.

47. A father, whatever his age may be, may, by will, appoint a guardian or guardians for his child during minority.

Will obtained by fraud, coercion, or importunity.

48. A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.

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* Of this Part, ss. 46, 48, and 49 extend to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870, s. 2.

Act X. of 1865.

Illustrations.

(*a.*) A falsely and knowingly represents to the testator that the testator's only child is dead, or that he has done some undutiful act, and thereby induces the testator to make a will in his (A's) favour; such will has been obtained by fraud, and is invalid.

(*b.*) A by fraud and deception prevails upon the testator to bequeath a legacy to him. The bequest is void.

(*c.*) A, being a prisoner by lawful authority, makes his will. The will is not invalid by reason of the imprisonment.

(*d.*) A threatens to shoot B, or to burn his house, or to cause him to be arrested on a criminal charge, unless he makes a bequest in favour of C. B in consequence makes a bequest in favour of C. The bequest is void, the making of it having been caused by coercion.

(*e.*) A, being of sufficient intellect, if undisturbed by the influence of others, to make a will, yet being so much under the control of B that he is not a free agent, makes a will dictated by B. It appears that he would not have executed the will but for fear of B. The will is invalid.

(*f.*) A, being in so feeble a state of health as to be unable to resist importunity, is pressed by B to make a will of a certain purport, and does so merely to purchase peace, and in submission to B. The will is invalid.

(*g.*) A being in such a state of health as to be capable of exercising his own judgment and volition, B uses urgent intercession and persuasion with him to induce him to make a will of a certain purport. A, in consequence of the intercession and persuasion, but in the free exercise of his judgment and volition, makes his will in the manner recommended by B. The will is not rendered invalid by the intercession and persuasion of B.

(*h.*) A, with a view to obtaining a legacy from B, pays him attention and flatters him, and thereby produces in him a capricious partiality to A. B, in consequence of such attention and flattery, makes his will, by which he leaves a legacy to A. The bequest is not rendered invalid by the attention and flattery of A.

Will may be revoked or altered.

49. A will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by will.

PART VIII.*

Of the Execution of Unprivileged Wills.

Execution of unprivileged wills.

50. Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or a mariner at sea, must execute his will according to the following rules:—

First.—The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

Second.—The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

Third.—The will shall be attested by two or more witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses must sign the will in the presence of the testator,† but it shall not be necessary

* This Part extends to the wills of Hindus, &c., in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870, s. 2.

† 3 N.-W. P. 35.

that more than one witness be present at the same time, and no particular form of attestation shall be necessary. Act X. of 1865.

Incorporation of papers by reference.

51. If a testator, in a will or codicil duly attested, refers to any other document than actually written, as expressing any part of his intentions, such document shall be considered as forming a part of the will or codicil in which it is referred to.

PART IX.

Of Privileged Wills.

Privileged will.

52. Any soldier being employed in an expedition, or engaged in actual warfare, or any mariner being at sea, may, if he has completed the age of eighteen years, dispose of his property by a will made as is mentioned in section 53.

Such wills are called privileged wills.

Illustrations.

(*a.*) A, the surgeon of a regiment, is actually employed in an expedition. He is a soldier actually employed in an expedition, and can make a privileged will.

(*b.*) A is at sea in a merchant-ship, of which he is the purser. He is a mariner, and, being at sea, can make a privileged will.

(*c.*) A, a soldier serving in the field against insurgents, is a soldier engaged in actual warfare, and as such can make a privileged will.

(*d.*) A, a mariner of a ship in the course of a voyage, is temporarily on shore while she is lying in harbour. He is, in the sense of the words used in this clause, a mariner at sea, and can make a privileged will.

(*e.*) A, an admiral who commands a naval force, but who lives on shore, and only occasionally goes on board his ship, is not considered as at sea, and cannot make a privileged will.

(*f.*) A, a mariner serving on a military expedition, but not being at sea, is considered as a soldier, and can make a privileged will.

Mode of making, and rules for executing, privileged wills.

53. Privileged wills may be in writing, or may be made by word of mouth.

The execution of them shall be governed by the following rules :—

First.—The will may be written wholly by the testator, with his own hand. In such case it need not be signed nor attested.

Second.—It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested.

Third.—If the instrument purporting to be a will is written wholly or in part by another person, and is not signed by the testator, it shall be considered to be his will, if it be shown that it was written by the testator's directions, or that he recognized it as his will.

If it appear on the face of the instrument that the execution of it in the manner intended by him was not completed, the instrument shall not, by reason of that circumstance, be invalid, provided that his non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument.

Act X, of 1865.

Fourth.—If the soldier or mariner shall have written instructions for the preparation of his will, but shall have died before it could be prepared and executed, such instructions shall be considered to constitute his will.

Fifth.—If the soldier or mariner shall, in the presence of two witnesses, have given verbal instructions for the preparation of his will, and they shall have been reduced into writing in his lifetime, but he shall have died before the instrument could be prepared and executed, such instructions shall be considered to constitute his will, although they may not have been reduced into writing in his presence, nor read over to him.

Sixth.—Such soldier or mariner as aforesaid may make a will by word of mouth by declaring his intentions before two witnesses present at the same time.

Seventh.—A will made by word of mouth shall be null at the expiration of one month after the testator shall have ceased to be entitled to make a privileged will.

PART X.

OF THE ATTESTATION, REVOCATION, ALTERATION, AND REVIVAL OF WILLS.

Effect of gift to attesting witness.

54. A will shall not be considered as insufficiently attested by reason of any benefit thereby given, either by way of bequest or by way of appointment, to any person attesting it, or to his or her wife or husband:

but the bequest or appointment shall be void so far as concerns the person so attesting, or the wife or husband of such person, or any person claiming under either of them.

Explanation.—A legatee under a will does not lose his legacy by attesting a codicil which confirms the will.

Witness not disqualified by interest or by being executor.

55. No person, by reason of interest in, or of his being an executor of, a will, is disqualified as a witness to prove the execution of the will or to prove the validity or invalidity thereof.*

Revocation of will by testator's marriage.

56. Every will shall be revoked by the marriage of the maker, except a will made in exercise of a power of appointment, when the property over which the power of appointment is exercised would not, in default of such appointment, pass to his or her executor or administrator, or to the person entitled in case of intestacy.

Power of appointment defined.

Explanation.—Where a man is invested with power to determine the disposition of property of which he is not the owner, he is said to have power to appoint such property.

Revocation of unprivileged will or codicil.

57. No unprivileged will or codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another will or codicil, or by some writing declaring an intention to revoke the same, and executed in the manner in which an unprivileged will is

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* This section, and ss. 57-60 (both inclusive), extend to the wills of Hindus, &c., in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870, s. 2.

hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Illustrations.

(*a.*) A has made an unprivileged will; afterwards A makes another unprivileged will which purports to revoke the first. This is a revocation.

(*b.*) A has made an unprivileged will. Afterwards, A, being entitled to make a privileged will, makes a privileged will, which purports to revoke his unprivileged will. This is a revocation.

Effect of obliteration, interlineation, or alteration in unprivileged will.

58. No obliteration, interlineation, or other alteration made in any unprivileged will after the execution thereof shall have any effect, except so far as the words or meaning of the will shall have been thereby rendered illegible or undiscernible, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; save that the will, as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of, or opposite to, a memorandum referring to such alteration, and written at the end or some other part of the will.

Revocation of privileged will or codicil.

59. A privileged will or codicil may be revoked by the testator, by an unprivileged will or codicil, or by any act expressing an intention to revoke it, and accompanied with such formalities as would be sufficient to give validity to a privileged will or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Explanation.—In order to the revocation of a privileged will or codicil by an act accompanied with such formalities as would be sufficient to give validity to a privileged will, it is not necessary that the testator should, at the time of doing that act, be in a situation which entitles him to make a privileged will.

Revival of unprivileged will.

60. No unprivileged will or codicil, nor any part thereof, which shall be in any manner revoked, shall be revived, otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same;

Extent of revival of will or codicil partly revoked, and afterwards wholly revoked.

and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown by the will or codicil.

PART XI.*

Of the Construction of Wills.

Wording of will.

61. It is not necessary that any technical words or terms of art shall be used in a will, but only that the wording shall be such that the intentions of the testator can be known therefrom.

* Of this part, ss. 61-77 (both inclusive) apply to the wills of Hindus, &c., in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870, s. 2.

Act X. of 1865.

Enquiries to determine questions as to object or subject of will.

62. For the purpose of determining questions as to what person or what property is denoted by any words used in a will, a Court must enquire into every material fact relating to the persons who claim to be interested under such will, the property which is claimed as the subject of disposition, the circumstances of the testator and of his family, and into every fact a knowledge of which may conduce to the right application of the words which the testator has used.

Illustrations.

(*a.*) A, by his will, bequeaths 1,000 rupees to his eldest son,* or to his youngest grandchild, or to his cousin Mary. A Court may make inquiry in order to ascertain to what person the description in the will applies.

(*b.*) A, by his will, leaves to B "his estate called Black Acre." It may be necessary to take evidence in order to ascertain what is the subject-matter of the bequest; that is to say, what estate of the testator's is called Black Acre.

(*c.*) A, by his will, leaves to B "the estate which he purchased of C." It may be necessary to take evidence in order to ascertain what estate the testator purchased of C.

Misnomer or misdescription of object.

63. Where the words used in the will to designate or describe a legatee, or a class of legatees, sufficiently show what is meant, an error in the name or description shall not prevent the legacy from taking effect.

A mistake in the name of a legatee may be corrected by a description of him, and a mistake in the description of a legatee may be corrected by the name.

Illustrations.

(*a.*) A bequeaths a legacy "to Thomas, the second son* of his brother John." The testator has an only brother, named John, who has no son named Thomas, but has a second son whose name is William. William shall have the legacy.

(*b.*) A bequeaths a legacy "to Thomas, the second son of his brother John." The testator has an only brother, named John, whose first son is named Thomas, and whose second son is named William. Thomas shall have the legacy.

(*c.*) The testator bequeaths his property "to A and B, the legitimate children of C." C has no legitimate child, but has two illegitimate children, A and B. The bequest to A and B takes effect, although they are illegitimate.

(*d.*) The testator gives his residuary estate to be divided among "his seven children,"* and, proceeding to enumerate them, mentions six names only. This omission shall not prevent the seventh child from taking a share with the others.

(*e.*) The testator, having six grandchildren,* makes a bequest to "his six grandchildren," and proceeding to mention them by their Christian names, mentions one twice over, omitting another altogether. The one whose name is not mentioned shall take a share with the others.

(*f.*) The testator bequeaths "1,000 rupees to each of the three children* of A." At the date of the will, A has four children. Each of these four children shall, if he survives the testator, receive a legacy of 1,000 rupees.

When words may be supplied.

64. Where any word material to the full expression of the meaning has been omitted, it may be supplied by the context.

Illustration.

The testator gives a legacy of "five hundred" to his daughter A, and a legacy of "five hundred rupees" to his daughter B. A shall take a legacy of five hundred rupees.

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* See Act XXI. of 1870, s. 6.

65. If the thing which the testator intended to bequeath can be sufficiently identified from the description of it given in the will, but some parts of the description do not apply, such parts of the description shall be rejected as erroneous, and the bequest shall take effect.

Rejection of erroneous particulars in description of subject.

Illustrations.

(*a.*) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X." The testator had marsh-lands lying in L, but had no marsh-lands in the occupation of X. The words "in the occupation of X" shall be rejected as erroneous, and the marsh-lands of the testator lying in L shall pass by the bequest.

(*b.*) The testator bequeaths to A "his zamindári of Rámpur." He had an estate at Rámpur, but it was a taluq, and not a zamindári. The taluq passes by this bequest.

66. If the will mentions several circumstances as descriptive of the thing which the testator intends to bequeath, and there is any property of his in respect of which all those circumstances exist, the bequest shall be considered as limited to such property, and it shall not be lawful to reject any part of the description as erroneous, because the testator had other property to which such part of the description does not apply.

When part of description may not be rejected as erroneous.

Explanation.—In judging whether a case falls within the meaning of this section, any words which would be liable to rejection under section 65 are to be considered as struck out of the will.

Illustrations.

(*a.*) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X." The testator had marsh-lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The bequest shall be considered as limited to such of the testator's marsh-lands lying in L as were in the occupation of X.

(*b.*) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X, comprising 1,000 bighás of land." The testator had marsh-lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The measurement is wholly inapplicable to the marsh-lands of either class, or to the whole taken together. The measurement shall be considered as struck out of the will, and such of the testator's marsh-lands lying in L as were in the occupation of X shall alone pass by the bequest.

67. Where the words of the will are unambiguous, but it is found by extrinsic evidence that they admit of applications, one only of which can have been intended by the testator, extrinsic evidence may be taken to show which of these applications was intended.

Extrinsic evidence admissible in case of latent ambiguity.

Illustrations.

(*a.*) A man, having two cousins of the name of Mary, bequeaths a sum of money to "his cousin Mary." It appears that there are two persons, each answering the description in the will. That description, therefore, admits of two applications, only one of which can have been intended by the testator. Evidence is admissible to show which of the two applications was intended.

(*b.*) A, by his will, leaves to B "his estate called Sultánpur Khurd." It turns out that he had two estates called Sultánpur Khurd. Evidence is admissible to show which estate was intended.

68. Where there is an ambiguity or deficiency on the face of the will, no extrinsic evidence as to the intentions of the testator shall be admitted.

Extrinsic evidence inadmissible in cases of patent ambiguity or deficiency.

Act X. of 1865.

Illustrations.

(*a*.) A man has an aunt Caroline and a cousin Mary, and has no aunt of the name of Mary. By his will he bequeaths 1,000 rupees to "his aunt Caroline" and 1,000 rupees to "his cousin Mary," and afterwards bequeaths 2,000 rupees to "his before-mentioned aunt Mary." There is no person to whom the description given in the will can apply, and evidence is not admissible to show who was meant by "his before-mentioned aunt Mary." The bequest is therefore void for uncertainty under section 76.

(*b*.) A bequeaths 1,000 rupees to , leaving a blank for the name of the legatee. Evidence is not admissible to show what name the testator intended to insert.

(*c*.) A bequeaths to B rupees, or "his estate of ." Evidence is not admissible to show what sum or what estate the testator intended to insert.

69. The meaning of any clause in a will is to be collected from the entire instrument, and all its parts are to be construed with reference to each other; and for this purpose a codicil is to be considered as part of the will.

Meaning of clause to be collected from entire will.

Illustrations.

(*a*.) The testator gives to B a specific fund or property at the death of A, and by a subsequent clause gives the whole of his property to A. The effect of the several clauses taken together is to vest the specific fund or property in A for life, and after his decease in B; it appearing from the bequest to B that the testator meant to use, in a restricted sense, the words in which he describes what he gives to A.

(*b*.) Where a testator, having an estate, one part of which is called Black Acre, bequeaths the whole of his estate to A, and in another part of his will bequeaths Black Acre to B, the latter bequest is to be read as an exception out of the first, as if he had said, "I give Black Acre to B, and all the rest of my estate to A."

70. General words may be understood in a restricted sense where it may be collected from the will that the testator meant to use them in a restricted sense; and words may be understood in a wider sense than that which they usually bear, where it may be collected from the other words of the will that the testator meant to use them in such wider sense.

When words may be understood in restricted sense, and when in sense wider than usual.

Illustrations.

(*a*.) A testator gives to A "his farm in the occupation of B," and to C "all his marsh-lands in L." Part of the farm in the occupation of B consists of marsh-lands in L, and the testator also has other marsh-lands in L. The general words, "all his marsh-lands in L," are restricted by the gift to A. A takes the whole of the farm in the occupation of B, including that portion of the farm which consists of marsh-lands in L.

(*b*.) The testator (a sailor on ship-board) bequeathed to his mother his gold ring, buttons, and chest of clothes, and to his friend A (a ship-mate) his red box, clasp-knife, and all things not before bequeathed. The testator's share in a house does not pass to A under this bequest.

(*c*.) A, by his will, bequeathed to B all his household furniture, plate, linen, china, books, pictures, and all other goods of whatever kind; and afterwards bequeathed to B a specified part of his property. Under the first bequest, B is entitled only to such articles of the testator's as are of the same nature with the articles therein enumerated.

71. Where a clause is susceptible of two meanings, according to one of which it has some effect, and according to the other it can have none, the former is to be preferred.

Which of two possible constructions preferred.

72. No part of a will is to be rejected as destitute of meaning if it is possible to put a reasonable construction upon it.

No part rejected if it can be reasonably construed.

73. If the same words occur in different parts of the same will, they must be taken to have been used everywhere in the same sense, unless there appears an intention to the contrary.

Interpretation of words repeated in different parts of will.

74. The intention of the testator is not to be set aside, because it cannot take effect to the full extent, but effect is to be given to it as far as possible.

Testator's intention to be effectuated as far as possible.

Illustration.

The testator, by a will made on his death-bed, bequeathed all his property to C D for life, and after his decease to a certain hospital. The intention of the testator cannot take effect to its full extent, because the gift to the hospital is void under section 105, but it shall take effect so far as regards the gift to C D.

75. Where two clauses or gifts in a will are irreconcileable, so that they cannot possibly stand together, the last shall prevail.

The last of two inconsistent clauses prevails.

Illustrations.

(*a.*) The testator, by the first clause of his will, leaves his estate of Ramnagar "to A," and, by the last clause of his will, leaves it "to B, and not to A." B shall have it.

(*b.*) If a man, at the commencement of his will, gives his house to A, and at the close of it directs that his house shall be sold, and the proceeds invested for the benefit of B, the latter disposition shall prevail.

76. A will or bequest not expressive of any definite intention is void for uncertainty.

Will or bequest void for uncertainty.

Illustration.

If a testator says, "I bequeath goods to A;" or, "I bequeath to A;" or, "I leave to A all the goods mentioned in a schedule," and no schedule is found; or "I bequeath 'money,' 'wheat,' 'oil,'" or the like, without saying how much, this is void.

77. The description contained in a will, of property, the subject of gift, shall, unless a contrary intention appear by the will, be deemed to refer to and comprise the property answering that description at the death of the testator.

Words describing subject refer to property answering description at testator's death.

78. Unless a contrary intention shall appear by the will, a bequest of the estate of the testator shall be construed to include any property which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power;

Power of appointment executed by general bequest.

and a bequest of property described in a general manner shall be construed to include any property to which such description may extend, which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power.

79. Where property is bequeathed to or for the benefit of such of certain objects as a specified person shall appoint, or for the benefit of certain objects in such proportions as a specified person shall appoint, and the will does not provide for the event of no appointment being made, if the power given by

Implied gift to objects of power in default of appointment.

Act X. of 1865.

the will be not exercised, the property belongs to all the objects of the power in equal shares.

Illustration.

A, by his will, bequeaths a fund to his wife, for her life, and directs that at her death it shall be divided among his children in such proportions as she shall appoint. The widow dies without having made any appointment. The fund shall be divided equally among the children.

Bequest to "heirs," &c., of particular person without qualifying terms.

80. Where a bequest is made to the "heirs," or "right heirs," or "relations," or "nearest relations," or "family," or "kindred," or "nearest of kin," or "next of kin," of a particular person, without any qualifying terms, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it, leaving assets for the payment of his debts independently of such property.

Illustrations.

(*a.*) A leaves his property "to his own nearest relations." The property goes to those who would be entitled to it if A had died intestate, leaving assets for the payment of his debts independently of such property.

(*b.*) A bequeaths 10,000 rupees "to B for his life, and after the death of B to his own right heirs." The legacy after B's death belongs to those who would be entitled to it if it had formed part of A's unbequeathed property.

(*c.*) A leaves his property to B; but if B dies before him, to B's next-of-kin: B dies before A; the property devolves as if it had belonged to B, and he had died intestate leaving assets for the payment of his debts independently of such property.

(*d.*) A leaves 10,000 rupees "to B for his life, and after his decease, to the heirs of C." The legacy goes as if it had belonged to C, and he had died intestate leaving assets for the payment of his debts independently of the legacy.

Bequest to "representatives," &c., of particular person.

81. Where a bequest is made to the "representatives," or "legal representatives," or "personal representatives," or "executors or administrators," of a particular person, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it.

Illustration.

A bequest is made to the "legal representatives" of A. A has died intestate and insolvent. B is his administrator. B is entitled to receive the legacy, and shall apply it in the first place to the discharge of such part of A's debts as may remain unpaid: if there be any surplus, B shall pay it to those persons who at A's death would have been entitled to receive any property of A's which might remain after payment of his debts, or to the representatives of such persons.

Bequest without words of limitation.

82. Where property is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the will that only a restricted interest was intended for him.*

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* This section, and ss. 83 and 85, apply to the wills of Hindus, &c., in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870, s. 2.

83. Where property is bequeathed to a person, with a bequest in the alternative to another person or to a class of persons; if a contrary intention does not appear by the will, the legatee first named shall be entitled to the legacy, if he be alive at the time when it takes effect; but, if he be then dead, the person or class of persons named in the second branch of the alternative shall take the legacy.

Bequest in alternative.

Illustrations.

(*a.*) A bequest is made to A or to B. A survives the testator. B takes nothing.

(*b.*) A bequest is made to A or to B. A dies after the date of the will, and before the testator. The legacy goes to B.

(*c.*) A bequest is made to A or to B. A is dead at the date of the will. The legacy goes to B.

(*d.*) Property is bequeathed to A or his heirs. A survives the testator. A takes the property absolutely.

(*e.*) Property is bequeathed to A or his nearest of kin. A dies in the lifetime of the testator. Upon the death of the testator, the bequest to A's nearest of kin takes effect.

(*f.*) Property is bequeathed to A for life, and after his death to B or his heirs. A and B survive the testator. B dies in A's lifetime. Upon A's death the bequest to the heirs of B takes effect.

(*g.*) Property is bequeathed to A for life, and after his death to B or his heirs. B dies in the testator's lifetime. A survives the testator. Upon A's death the bequest to the heirs of B takes effect.

84. Where property is bequeathed to a person, and words are added which describe a class of persons, but do not denote them as direct objects of a distinct and independent gift, such person is entitled to the whole interest of the testator therein, unless a contrary intention appears by the will.

Effect of words, describing a class added to bequest to a person.

Illustrations.

(*a.*) A bequest is made—

to A and his children,
to A and his children by his present wife,
to A and his heirs,
to A and the heirs of his body,
to A and the heirs male of his body,
to A and the heirs female of his body,
to A and his issue,
to A and his family,
to A and his descendants,
to A and his representatives,
to A and his personal representatives,
to A, his executors, and administrators.

In each of these cases, A takes the whole interest which the testator had in the property.

(*b.*) A bequest is made to A and his brothers. A and his brothers are jointly entitled to the legacy.

(*c.*) A bequest is made to A for life, and after his death to his issue. At the death of A the property belongs in equal shares to all persons who shall then answer the description of issue of A.

85. Where a bequest is made to a class of persons under a general description only, no one to whom the words of the description are not in their ordinary sense applicable shall take the legacy.

Bequest to class of persons under general description only.

Construction of terms.

86. The word "children" in a will applies only to lineal descendants in the first degree;

Act X. of 1865.

the word "grandchildren" applies only to lineal descendants in the second degree of the person whose "children" or "grandchildren" are spoken of;

the words "nephews" and "nieces" apply only to children of brothers or sisters;

the words "cousins," or "first cousins," or "cousins-german," apply only to children of brothers or of sisters of the father or mother of the person whose "cousins," or "first cousins," or "cousins-german," are spoken of;

the words "first cousins once removed" apply only to children of cousins-german, or to cousins-german of a parent of the person whose "first cousins once removed" are spoken of;

the words "second cousins" apply only to grandchildren of brothers or of sisters of the grandfather or grandmother of the person whose "second cousins" are spoken of;

the words "issue" and "descendants" apply to all lineal descendants whatever of the person whose "issue" or "descendants" are spoken of.

Words expressive of collateral relationship apply alike to relatives of full and of half-blood.

All words expressive of relationship apply to a child in the womb who is afterwards born alive.

Words expressing relationship denote only legitimate relatives, or, failing such, relatives reputed legitimate.

87. In the absence of any intimation to the contrary in the will, the term "child," "son," or "daughter," or any word which expresses relationship, is to be understood as denoting only a legitimate relative, or, where there is no such legitimate relative, a person who has acquired, at the date of the will, the reputation of being such relative.

Illustrations.

(*a.*) A, having three children, B, C, and D, of whom B and C are legitimate, and D is illegitimate, leaves his property to be equally divided among "his children." The property belongs to B and C in equal shares to the exclusion of D.

(*b.*) A, having a niece of illegitimate birth, who has acquired the reputation of being his niece, and having no legitimate niece, bequeaths a sum of money to his niece. The illegitimate niece is entitled to the legacy.

(*c.*) A, having in his will enumerated his children, and named as one of them B, who is illegitimate, leaves a legacy to "his said children." B will take a share in the legacy along with the legitimate children.

(*d.*) A leaves a legacy to the "children of B." B is dead, and has left none but illegitimate children. All those who had, at the date of the will, acquired the reputation of being the children of B, are objects of the gift.

(*e.*) A bequeathed a legacy to "the children of B." B never had any legitimate child. C and D had, at the date of the will, acquired the reputation of being children of B. After the date of the will, and before the death of the testator, E and F were born, and acquired the reputation of being children of B. Only C and D are objects of the bequest.

(*f.*) A makes a bequest in favour of his child by a certain woman, not his wife. B had acquired, at the date of the will, the reputation of being the child of A by the woman designated. B takes the legacy.

(*g.*) A makes a bequest in favour of his child to be born of a woman, who never becomes his wife. The bequest is void.

(*h.*) A makes a bequest in favour of the child of which a certain woman, not married to him, is pregnant. The bequest is valid.

Rules of construction where will purports to make two bequests to same person.

88.* Where a will purports to make two bequests to the same person, and a question arises whether the testator intended to make the second bequest instead of, or in addition to, the first, if there is nothing in the will to show what he intended, the following rules shall prevail in determining the construction to be put upon the will :—

First.—If the same specific thing is bequeathed twice to the same legatee in the same will, or in the will and again in a codicil, he is entitled to receive that specific thing only.

Second.—Where one and the same will or one and the same codicil purports to make, in two places, a bequest to the same person of the same quantity or amount of anything, he shall be entitled to one such legacy only.

Third.—Where two legacies of unequal amount are given to the same person in the same will, or in the same codicil, the legatee is entitled to both.

Fourth.—Where two legacies, whether equal or unequal in amount, are given to the same legatee, one by a will and the other by a codicil, or each by a different codicil, the legatee is entitled to both legacies.

Explanation.—In the four last rules, the word "will" does not include a codicil.

Illustrations.

(*a.*) A, having ten shares, and no more, in the Bank of Bengal, made his will, which contains near its commencement the words, "I bequeath my ten shares in the Bank of Bengal to B." After other bequests, the will concludes with the words, "and I bequeath my ten shares in the Bank of Bengal to B." B is entitled simply to receive A's ten shares in the Bank of Bengal.

(*b.*) A, having one diamond ring which was given him by B, bequeathed to C the diamond ring which was given him by B. A afterwards made a codicil to his will, and thereby, after giving other legacies, he bequeathed to C the diamond ring which was given him by B. C can claim nothing except the diamond ring which was given to A by B.

(*c.*) A, by his will, bequeaths to B the sum of 5,000 rupees, and afterwards, in the same will, repeats the bequest in the same words. B is entitled to one legacy of 5,000 rupees only.

(*d.*) A, by his will, bequeaths to B the sum of 5,000 rupees, and afterwards, by the same will, bequeaths to B the sum of 6,000 rupees. B is entitled to 11,000 rupees.

(*e.*) A, by his will, bequeaths to B 5,000 rupees, and by a codicil to the will he bequeaths to him 5,000 rupees. B is entitled to receive 10,000 rupees.

(*f.*) A, by one codicil to his will, bequeaths to B 5,000 rupees, and by another codicil bequeaths to him 6,000 rupees. B is entitled to receive 11,000 rupees.

(*g.*) A, by his will, bequeaths "500 rupees to B because she was his nurse," and in another part of the will bequeaths 500 rupees to B "because she went to England with his children." B is entitled to receive 1,000 rupees.

(*h.*) A, by his will, bequeaths to B the sum of 5,000 rupees, and also, in another part of the will, an annuity of 400 rupees. B is entitled to both legacies.

(*i.*) A, by his will, bequeaths to B the sum of 5,000 rupees, and also bequeaths to him the sum of 5,000 rupees if he shall attain the age of 18. B is entitled absolutely to one sum of 5,000 rupees, and takes a contingent interest in another sum of 5,000 rupees.

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* This section, and ss. 89-103 (both inclusive), apply to the wills of Hindus, &c., in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870, s. 2.

Act X. of 1865.

Constitution of residuary legatee.

89. A residuary legatee may be constituted by any words that show an intention on the part of the testator that the person designated shall take the surplus or residue of his property.

Illustrations.

(*a.*) A, makes her will, consisting of several testamentary papers, in one of which are contained the following words : "I think there will be something left, after all funeral expenses, &c., to give to B, now at school, towards equipping him to any profession he may hereafter be appointed to." B is constituted residuary legatee.

(*b.*) A makes his will with the following passage at the end of it : "I believe there will be found sufficient in my banker's hands to defray and discharge my debts, which I hereby desire B to do, and keep the residue for her own use and pleasure." B is constituted the residuary legatee.

(*c.*) A bequeaths all his property to B, except certain stocks and funds, which he bequeaths to C. B is the residuary legatee.

Property to which residuary legatee entitled.

90. Under a residuary bequest, the legatee is entitled to all property belonging to the testator at the time of his death, of which he has not made any other testamentary disposition which is capable of taking effect.

Illustration.

A, by his will, bequeaths certain legacies, one of which is void under section 105, and another lapses by the death of the legatee. He bequeaths the residue of his property to B. After the date of his will, A purchases a zamindári, which belongs to him at the time of his death. B is entitled to the two legacies and the zamindári as part of the residue.

Time of vesting of legacy in general terms.

91. If a legacy be given in general terms, without specifying the time when it is to be paid, the legatee has a vested interest in it from the day of the death of the testator, and if he dies without having received it, it shall pass to his representatives.

In what case legacy lapses.

92. If the legatee does not survive the testator, the legacy cannot take effect, but shall lapse and form part of the residue of the testator's property, unless it appear by the will that the testator intended that it should go to some other person.

In order to entitle the representatives of the legatee to receive the legacy, it must be proved that he survived the testator.

Illustrations.

(*a.*) The testator bequeaths to B "500 rupees which B owes him." B dies before the testator; the legacy lapses.

(*b.*) A bequest is made to A and his children.* A dies before the testator, or happens to be dead when the will is made. The legacy to A and his children lapses.

(*c.*) A legacy is given to A, and, in case of his dying before the testator, to B. A dies before the testator. The legacy goes to B.

(*d.*) A sum of money is bequeathed to A for life, and after his death to B. A dies in the lifetime of the testator; B survives the testator. The bequest to B takes effect.

(*e.*) A sum of money is bequeathed to A on his completing his eighteenth year, and, in case he should die before he completes his eighteenth year, to B. A completes his eighteenth year, and dies in the lifetime of the testator. The legacy to A lapses, and the bequest to B does not take effect.

(*f.*) The testator and the legatee perished in the same shipwreck. There is no evidence to show which died first. The legacy will lapse.

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* See s. 6, Act XXI., 1870.

Legacy does not lapse if one of two joint legatees die before testator.

93. If a legacy be given to two persons jointly, and one of them die before the testator, the other legatee takes the whole. Act X. of 1865.

Illustration.

The legacy is simply to A and B. A dies before the testator. B takes the legacy.

94. But where a legacy is given to legatees in words which show that the testator intended to give them distinct shares of it, then, if any legatee die before the testator, so much of the legacy as was intended for him shall fall into the residue of the testator's property.

Effect of words showing testator's intention to give distinct shares.

Illustration.

A sum of money is bequeathed to A, B, and C, to be equally divided among them. A dies before the testator. B and C shall only take so much as they would have had if A had survived the testator.

When lapsed share goes as undisposed of.

95. Where the share that lapses is a part of the general residue bequeathed by the will, that share shall go as undisposed of.

Illustration.

The testator bequeaths the residue of his estate to A, B, and C, to be equally divided between them. A dies before the testator. His one-third of the residue goes as undisposed of.

96. Where a bequest shall have been made to any child* or other lineal descendant of the testator, and the legatee shall die in the lifetime of the testator, but any lineal descendant of his shall survive the testator, the bequest shall not lapse, but shall take effect as if the death of the legatee had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

When bequest to testator's child or lineal descendant does not lapse on his death in testator's lifetime.

Illustration.

A makes his will, by which he bequeaths a sum of money to his son* B, for his own absolute use and benefit. B dies before A, leaving a son C who survives A, and having made his will, whereby he bequeaths all his property to his widow D. The money goes to D.

97. Where a bequest is made to one person for the benefit of another, the legacy does not lapse by the death, in the testator's lifetime, of the person to whom the bequest is made.

Bequest to A for benefit of B does not lapse by A's death.

98. Where a bequest is made simply to a described class of persons, the thing bequeathed shall go only to such as shall be alive at the testator's death.

Survivorship in case of bequest to described class.

Exception.—If property is bequeathed to a class of persons described as standing in a particular degree of kindred to a specified individual, but their possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest or otherwise, the property shall at that time go to such of them as shall be then alive, and to the representatives of any of them who have died since the death of the testator.

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* See s. 6, Act XXI. of 1870.

Act X. of 1865.

Illustrations.

(*a.*) A bequeaths 1,000 rupees to "the children"* of B without saying when it is to be distributed among them. B had died previous to the date of the will, leaving three children, C, D, and E. E died after the date of the will, but before the death of A. C and D survive A. The legacy shall belong to C and D to the exclusion of the representatives of E.

(*b.*) A bequeaths a legacy to the children* of B. At the time of the testator's death, B has no children. The bequest is void.

(*c.*) A lease for years of a house was bequeathed to A for his life, and after his decease to the children* of B. At the death of the testator, B had two children living, C and D; and he never had any other child. Afterwards, during the lifetime of A, C died leaving E his executor. D has survived A. D and E are jointly entitled to so much of the leasehold term as remains unexpired.

(*d.*) A sum of money was bequeathed to A for her life, and after her decease to the children* of B. At the death of the testator, B had two children living, C and D, and after that event, two children, E and F, were born to B. C and E died in the lifetime of A, C having made a will, E having made no will. A has died, leaving D and F surviving her. The legacy is to be divided into four equal parts, one of which is to be paid to the executor of C, one to D, one to the administrator of E, and one to F.

(*e.*) A bequeaths one-third of his lands to B for his life, and after his decease to the sisters of B. At the death of the testator, B had two sisters living, C and D, and after that event another sister E was born. C died during the life of B; D and E have survived B. One-third of A's lands belongs to D, E, and the representatives of C in equal shares.

(*f.*) A bequeaths 1,000 rupees to B for life, and after his death equally among the children* of C. Up to the death of B, C had not had any child. The bequest after the death of B is void.

(*g.*) A bequeaths 1,000 rupees to "all the children* born or to be born" of B, to be divided among them at the death of C. At the death of the testator, B has two children living, D and E. After the death of the testator, but in the lifetime of C, two other children, F and G, are born to C. After the death of C, another child is born to B. The legacy belongs to D, E, F, and G to the exclusion of the after-born child of B.

(*h.*) A bequeaths a fund to the children* of B, to be divided among them when the elder shall attain majority. At the testator's death, B had one child living, named C. He afterwards had two other children, named D and E. E died, but C and D were living when C attained majority. The fund belongs to C, D, and the representatives of E to the exclusion of any child who may be born to B after C's attaining majority.

PART XII.†

OF VOID BEQUESTS.

Bequest to person by particular description who is not in existence at testator's death.

99. Where a bequest is made to a person by a particular description, and there is no person in existence at the testator's death who answers the description, the bequest is void.

Exception.—If property is bequeathed to a person described as standing in a particular degree of kindred to a specified individual, but his possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest, or otherwise, and if a person answering the description is alive at the death of the testator, or comes into existence between that event and such later time, the property shall, at such later time, go to that person, or, if he be dead, to his representatives.

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* See s. 6, Act XXI. of 1870.

† Ss. 99 to 103 (both inclusive) apply to the wills of Hindus, Jainás, Sikhs, and Buddhists in the Lower Provinces of Bengal and the towns of Madras and Bombay.—See Act XXI. of 1870, ss. 2 and 6, as amended by Act V. of 1881, s. 154.

Illustrations.

(*a.*) A bequeaths 1,000 rupees to the eldest son* of B. At the death of the testator, B has no son. The bequest is void.

(*b.*) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son* of C. At the death of the testator, C had no son. Afterwards, during the life of B, a son is born to C. Upon B's death the legacy goes to C's son.

(*c.*) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son* of C. At the death of the testator, C had no son; afterwards, during the life of B, a son named D is born to C. D dies; then B dies. The legacy goes to the representative of D.

(*d.*) A bequeaths his estate of Green Acre to B for life, and at his decease to the eldest son* of C. Up to the death of B, C has had no son. The bequest to C's eldest son is void.

(*e.*) A bequeaths 1,000 rupees to the eldest son* of C, to be paid to him after the death of B. At the death of the testator, C has no son, but a son is afterwards born to him during the life of B and is alive at B's death. C's son is entitled to the 1,000 rupees.

Bequest to person not in existence at testator's death, subject to prior bequest.

100. Where a bequest is made to a person not in existence at the time of the testator's death, subject to a prior bequest contained in the will, the later bequest shall be void unless it comprises the whole of the remaining interest of the testator in the thing bequeathed.

Illustrations.

(*a.*) Property is bequeathed to A for his life, and after his death to his eldest son* for life, and after the death of the latter to his eldest son. At the time of the testator's death, A has no son. Here the bequest to A's eldest son is a bequest to a person not in existence at the testator's death. It is not a bequest of the whole interest that remains to the testator. The bequest to A's eldest son for his life is void.

(*b.*) A fund is bequeathed to A for his life, and after his death to his daughters. A survives the testator. A has daughters, some of whom were not in existence at the testator's death. The bequest to A's daughters comprises the whole interest that remains to the testator in the thing bequeathed. The bequest to A's daughters is valid.

(*c.*) A fund is bequeathed to A for his life, and after his death to his daughters, with a direction that, if any of them marries under the age of eighteen, her portion shall be settled, so that it may belong to herself for life, and may be divisible among her children* after her death. A has no daughters living at the time of the testator's death, but has daughters born afterwards who survive him. Here the direction for a settlement has the effect, in the case of each daughter who marries under eighteen, of substituting, for the absolute bequest to her, a bequest to her merely for her life; that is to say, a bequest to a person not in existence at the time of the testator's death of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund is void.

(*d.*) A bequeaths a sum of money to B for life, and directs that upon the death of B, the fund shall be settled upon his daughters, so that the portion of each daughter may belong to herself for life, and may be divided among her children* after her death. B has no daughter living at the time of the testator's death. In this case the only bequest to the daughters of B is contained in the direction to settle the fund, and this direction amounts to a bequest, to persons not yet born, of a life-interest in the fund, that is to say, of something which is less than the whole interest that remains in the testator in the thing bequeathed. The direction to settle the fund upon the daughters of B is void.

Rule against perpetuity.

101. No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator's decease, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing bequeathed is to belong.

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* See s. 6, Act XXI., 1870.

Act X. of 1865.

Illustrations.

(*a*.) A fund is bequeathed to A for his life; and after his death to B for his life; and after B's death to such of the sons* of B as shall first attain the age of 25. A and B survive the testator. Here the son of B, who shall first attain the age of 25, may be a son born after the death of the testator; such son may not attain 25 until more than 18 years have elapsed from the death of the longer liver of A and B; and the vesting of the fund may thus be delayed beyond the lifetime of A and B, and the minority of the sons of B. The bequest after B's death is void.

(*b*.) A fund is bequeathed to A for his life; and after his death to B for his life; and after B's death to such of B's sons* as shall first attain the age of 25. B dies in the lifetime of the testator, leaving one or more sons. In this case the sons of B are persons living at the time of the testator's decease, and the time when either of them will attain 25, necessarily falls within his own lifetime. The bequest is valid.

(*c*.) A fund is bequeathed to A for his life, and after his death to B for his life, with a direction that after B's death it shall be divided amongst such of B's children as shall attain the age of 18; but that, if no child of B shall attain that age, the fund shall go to C. Here the time for the division of the fund must arrive at the latest at the expiration of 18 years from the death of B, a person living at the testator's decease. All the bequests are valid.

(*d*.) A fund is bequeathed to trustees for the benefit of the testator's daughters, with a direction that, if any of them marry under age, her share of the fund shall be settled, so as to devolve after her death upon such of her children* as shall attain the age of 18. Any daughter of the testator to whom the direction applies must be in existence at his decease, and any portion of the fund which may eventually be settled as directed must vest not later than 18 years from the death of the daughter whose share it was. All these provisions are valid.

Bequest to a class, some of whom may come under rules in sections 100 and 101.

102. If a bequest is made to a class of persons, with regard to some of whom it is inoperative by reason of the rules contained in the two last preceding sections, or either of them, such bequest shall be wholly void.†

Illustrations.

(*a*.) A fund is bequeathed to A for life, and after his death to all his children* who shall attain the age of 25. A survives the testator, and has some children living at the testator's death. Each child of A's living at the testator's death must attain the age of 25 (if at all) within the limits allowed for a bequest. But A may have children after the testator's decease, some of whom may not attain the age of 25 until more than 18 years have elapsed after the decease of A. The bequest to A's children, therefore, is inoperative as to any child born after the testator's death; and, as it is given to all his children as a class, it is not good as to any division of that class, but is wholly void.

(*b*.) A fund is bequeathed to A for his life, and after his death to B, C, D, and all other the children* of A who shall attain the age of 25. B, C, and D are children of A living at the testator's decease. In all other respects the case is the same as that supposed in illustration (*a*). The mention of B, C, and D by name does not prevent the bequest from being regarded as a bequest to a class, and the bequest is wholly void.

Bequest to take effect on failure of bequest void under section 100, 101, or 102.

103. Where a bequest is void by reason of any of the rules contained in the three last preceding sections, any bequest contained in the same will, and intended to take effect after or upon failure of such prior bequest, is also void.

Illustrations.

(*a*.) A fund is bequeathed to A for his life, and after his death to such of his sons* as shall first attain the age of 25, for his life, and after the decease of such son, to B. A and B survive the testator. The bequest to B is intended to take effect after the bequest to such

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* See s. 6, Act XXI., 1870.

† 8 Beng. 400.

of the sons of A as shall first attain the age of 25, which bequest is void under section 101. The bequest to B is void.

(*b.*) A fund is bequeathed to A for his life, and after his death to such of his sons* as shall first attain the age of 25, and, if no son of A shall attain that age, to B. A and B survive the testator. The bequest to B is intended to take effect upon failure of the bequest to such of A's sons* as shall first attain the age of 25, which bequest is void under section 101. The bequest to B is void.

104. A direction to accumulate the income arising from any property shall be void ; and the property shall be disposed of as if no accumulation had been directed.

Effect of direction for accumulation.

Exception.—Where the property is immoveable, or where accumulation is directed to be made from the death of the testator, the direction shall be valid in respect only of the income arising from the property within one year next following the testator's death ;

and at the end of the year such property and income shall be disposed of respectively as if the period during which the accumulation has been directed to be made had elapsed.

Illustrations

(*a.*) The will directs that the sum of 10,000 rupees shall be invested in Government securities, and the income accumulated for 20 years, and that the principal together with the accumulations, shall then be divided between A, B, and C. A, B, and C are entitled to receive the sum of 10,000 rupees at the end of the year from the testator's death.

(*b.*) The will directs that 10,000 rupees shall be invested, and the income accumulated until A shall marry, and shall then be paid to him. A is entitled to receive 10,000 rupees at the end of a year from the testator's death.

(*c.*) The will directs that the rents of the farm of Sultánpur shall be accumulated for ten years, and that the accumulation shall be then paid to the eldest son of A. At the death of the testator, A has an eldest son living, named B. B shall receive at the end of one year from the testator's death the rents which have accrued during the year, together with any interest which may have been made by investing them.

(*d.*) The will directs that the rents of the farm of Sultánpur shall be accumulated for ten years, and that the accumulations shall then be paid to the eldest son of A. At the death of the testator, A has no son. The bequest is void.

(*e.*) A bequeaths a sum of money to B, to be paid to him when he shall attain the age of 18, and directs the interest to be accumulated till he shall arrive at that age. At A's death the legacy becomes vested in B ; and so much of the interest as is not required for his maintenance and education is accumulated, not by reason of the direction contained in the will, but in consequence of B's minority.

105. No man having a nephew or niece or any nearer relative shall have power to bequeath any property to religious or charitable uses, except by a will executed not less than twelve months before his death, and deposited within six months from its execution in some place provided by law for the safe custody of the wills of living persons.

Bequest to religious or charitable uses.

Illustration.

A, having a nephew, makes a bequest by a will not executed nor deposited as required—

for the relief of poor people ;
for the maintenance of sick soldiers ;
for the erection or support of a hospital ;
for the education and preferment of orphans ;
for the support of scholars ;
for the erection or support of a school ;
for the building and repairs of a bridge ;
for the making of roads ;
for the erection or support of a church ;

* See s. 6, Act XXI., 1870.

Act X. of 1865.

for the repairs of a church ;
for the benefit of ministers of religion ;
for the formation or support of a public garden.

All these bequests are void.

PART XIII.*

Of the Vesting of Legacies.

Date of vesting of legacy when payment or possession postponed.

106. Where, by the terms of a bequest, the legatee is not entitled to immediate possession of the thing bequeathed, a right to receive it at the proper time shall, unless a contrary intention appears by the will, become vested in the legatee on the testator's death, and shall pass to the legatee's representatives if he dies before that time, and without having received the legacy.

And in such cases the legacy is, from the testator's death, said to be vested in interest.

Explanation.—An intention that a legacy to any person shall not become vested in interest in him is not to be inferred merely from a provision whereby the payment or possession of the thing bequeathed is postponed, or whereby a prior interest therein is bequeathed to some other person, or whereby the income arising from the fund bequeathed is directed to be accumulated until the time of payment arrives, or from a provision that, if a particular event shall happen, the legacy shall go over to another person.

Illustrations.

(*a.*) A bequeaths to B 100 rupees, to be paid to him at the death of C. On A's death the legacy becomes vested in interest in B, and if he dies before C, his representatives are entitled to the legacy.

(*b.*) A bequeaths to B 100 rupees, to be paid to him upon his attaining the age of 18. On A's death the legacy becomes vested in interest in B.

(*c.*) A fund is bequeathed to A for life, and after his death to B. On the testator's death, the legacy to B becomes vested in interest in B.

(*d.*) A fund is bequeathed to A until B attains the age of 18, and then to B. The legacy to B is vested in interest from the testator's death.

(*e.*) A bequeaths the whole of his property to B upon trust to pay certain debts out of the income, and then to make over the fund to C. At A's death the gift to C becomes vested in interest in him.

(*f.*) A fund is bequeathed to A, B, and C in equal shares, to be paid to them on their attaining the age of 18 respectively, with a proviso that, if all of them die under the age of 18, the legacy shall devolve upon D. On the death of the testator, the shares vest in interest in A, B, and C, subject to be divested in case A, B, and C shall all die under 18, and upon the death of any of them (except the last survivor) under the age of 18, his vested interest passes, so subject, to his representatives.

Date of vesting when legacy contingent upon specified uncertain event.

107. A legacy bequeathed in case a specified uncertain event shall happen does not vest until that event happens.

A legacy bequeathed in case a specified uncertain event shall not happen does not vest until the happening of that event becomes impossible.

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* This Part applies to the wills of Hindus, &c., in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870, s. 2.

In either case, until the condition has been fulfilled, the interest of the legatee is called contingent. Act X. of 1865.

Exception.—Where a fund is bequeathed to any person upon his attaining a particular age, and the will also gives to him absolutely the income to arise from the fund before he reaches that age, or directs the income, or so much of it as may be necessary, to be applied for his benefit, the bequest of the fund is not contingent.

Illustrations.

(*a.*) A legacy is bequeathed to D in case A, B, and C shall all die under the age of 18. D has a contingent interest in the legacy until A, B, and C, all die under 18, or one of them attains that age.

(*b.*) A sum of money is bequeathed to A "in case he shall attain the age of 18," or "when he shall attain the age of 18." A's interest in the legacy is contingent until the condition shall be fulfilled by his attaining that age.

(*c.*) An estate is bequeathed to A for life, and after his death to B, if B shall then be living, but, if B shall not be then living, to C. A, B, and C survive the testator. B and C each take a contingent interest in the estate until the event which is to vest it in one or in the other shall have happened.

(*d.*) An estate is bequeathed as in the case last supposed. B dies in the lifetime of A and C. Upon the death of B, C acquires a vested right to obtain possession of the estate upon A's death.

(*e.*) A legacy is bequeathed to A when she shall attain the age of 18, or shall marry under that age with the consent of B, with a proviso that, if she shall not attain 18, or marry under that age with B's consent, the legacy shall go to C. A and C each take a contingent interest in the legacy. A attains the age of 18. A becomes absolutely entitled to the legacy, although she may have married under 18 without the consent of B.

(*f.*) An estate is bequeathed to A until he shall marry, and after that event to B. B's interest in the bequest is contingent until the condition shall be fulfilled by A's marrying.

(*g.*) An estate is bequeathed to A until he shall take advantage of the Act for the Relief of Insolvent Debtors, and after that event to B. B's interest in the bequest is contingent until A takes advantage of the Act.

(*h.*) An estate is bequeathed to A if he shall pay 500 rupees to B. A's interest in the bequest is contingent until he has paid 500 rupees to B.

(*i.*) A leaves his farm of Sultánpur Khurd to B, if B shall convey his own farm of Sultánpur Buzurg to C. B's interest in the bequest is contingent until he has conveyed the latter farm to C.

(*j.*) A fund is bequeathed to A if B shall not marry C within five years after the testator's death. A's interest in the legacy is contingent, until the condition shall be fulfilled by the expiration of the five years without B's having married C, or by the occurrence, within that period, of an event which makes the fulfilment of the condition impossible.

(*k.*) A fund is bequeathed to A if B shall not make any provision for him by will. The legacy is contingent until B's death.

(*l.*) A bequeaths to B 500 rupees a year upon his attaining the age of 18, and directs that the interest, or a competent part thereof, shall be applied for his benefit until he reaches that age. The legacy is vested.

(*m.*) A bequeaths to B 500 rupees when he shall attain the age of 18, and directs that a certain sum, out of another fund, shall be applied for his maintenance until he arrives at that age. The legacy is contingent.

Vesting of interest in bequest to such members of a class as shall have attained particular age.

108. Where a bequest is made only to such members of a class as shall have attained a particular age, a person who has not attained that age cannot have a vested interest in the legacy.

Illustrations.

(*a.*) A bequeaths 1,000 rupees to the eldest son* of B. At the death of the testator, B has no son. The bequest is void.

(*b.*) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son* of C. At the death of the testator, C had no son. Afterwards, during the life of B, a son is born to C. Upon B's death the legacy goes to C's son.

(*c.*) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son* of C. At the death of the testator, C had no son; afterwards, during the life of B, a son named D is born to C. D dies; then B dies. The legacy goes to the representative of D.

(*d.*) A bequeaths his estate of Green Acre to B for life, and at his decease to the eldest son* of C. Up to the death of B, C has had no son. The bequest to C's eldest son is void.

(*e.*) A bequeaths 1,000 rupees to the eldest son* of C, to be paid to him after the death of B. At the death of the testator, C has no son, but a son is afterwards born to him during the life of B and is alive at B's death. C's son is entitled to the 1,000 rupees.

Bequest to person not in existence at testator's death, subject to prior bequest.

100. Where a bequest is made to a person not in existence at the time of the testator's death, subject to a prior bequest contained in the will, the later bequest shall be void unless it comprises the whole of the remaining interest of the testator in the thing bequeathed.

Illustrations.

(*a.*) Property is bequeathed to A for his life, and after his death to his eldest son* for life, and after the death of the latter to his eldest son. At the time of the testator's death, A has no son. Here the bequest to A's eldest son is a bequest to a person not in existence at the testator's death. It is not a bequest of the whole interest that remains to the testator. The bequest to A's eldest son for his life is void.

(*b.*) A fund is bequeathed to A for his life, and after his death to his daughters. A survives the testator. A has daughters, some of whom were not in existence at the testator's death. The bequest to A's daughters comprises the whole interest that remains to the testator in the thing bequeathed. The bequest to A's daughters is valid.

(*c.*) A fund is bequeathed to A for his life, and after his death to his daughters, with a direction that, if any of them marries under the age of eighteen, her portion shall be settled, so that it may belong to herself for life, and may be divisible among her children* after her death. A has no daughters living at the time of the testator's death, but has daughters born afterwards who survive him. Here the direction for a settlement has the effect, in the case of each daughter who marries under eighteen, of substituting, for the absolute bequest to her, a bequest to her merely for her life; that is to say, a bequest to a person not in existence at the time of the testator's death of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund is void.

(*d.*) A bequeaths a sum of money to B for life, and directs that upon the death of B, the fund shall be settled upon his daughters, so that the portion of each daughter may belong to herself for life, and may be divided among her children* after her death. B has no daughter living at the time of the testator's death. In this case the only bequest to the daughters of B is contained in the direction to settle the fund, and this direction amounts to a bequest, to persons not yet born, of a life-interest in the fund, that is to say, of something which is less than the whole interest that remains in the testator in the thing bequeathed. The direction to settle the fund upon the daughters of B is void.

Rule against perpetuity.

101. No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator's decease, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing bequeathed is to belong.

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* See s. 6, Act XXI., 1870.

(*c.*) A legacy is bequeathed to A when and if he attains the age of 18, and, in case of his death to B. A attains the age of 18. The legacy to B does not take effect.

(*d.*) A legacy is bequeathed to A for life, and after his death to B, and, "in case of B's death without children," to C. The words "in case of B's death without children" are to be understood as meaning "in case B shall die without children during the lifetime of A."

(*e.*) A legacy is bequeathed to A for life, and after his death to B, and, "in case of B's death," to C. The words "in case of B's death" are to be considered as meaning "in case B shall die in the lifetime of A."

Bequest to such of certain persons as shall be surviving at some period not specified.

112. Where a bequest is made to such of certain persons as shall be surviving at some period, but the exact period is not specified, the legacy shall go to such of them as shall be alive at the time of payment or distribution, unless a contrary intention appear by the will.

Illustrations.

(*a.*) Property is bequeathed to A and B, to be equally divided between them, or to the survivor of them. If both A and B survive the testator, the legacy is equally divided between them. If A dies before the testator, and B survives the testator, it goes to B.

(*b.*) Property is bequeathed to A for life, and after his death to B and C, to be equally divided between them, or to the survivor of them. B dies during the life of A ; C survives A. At A's death the legacy goes to C.

(*c.*) Property is bequeathed to A for life, and after his death to B and C, or the survivor, with a direction that, if B should not survive the testator, his children are to stand in his place. C dies during the life of the testator ; B survives the testator, but dies in the lifetime of A. The legacy goes to the representative of B.

(*d.*) Property is bequeathed to A for life, and after his death to B and C, with a direction that, in case either of them dies in the lifetime of A, the whole shall go to the survivor. B dies in the lifetime of A. Afterwards C dies in the lifetime of A. The legacy goes to the representative of C.

PART XVI.*

Of Conditional Bequests.

Bequest upon impossible condition.

113. A bequest upon an impossible condition is void.

Illustrations.

(*a.*) An estate is bequeathed to A on condition that he shall walk one hundred miles in an hour. The bequest is void.

(*b.*) A bequeaths 500 rupees to B on condition that he shall marry A's daughter. A's daughter was dead at the date of the will. The bequest is void.

Bequest upon illegal or immoral condition.

114. A bequest upon a condition, the fulfilment of which would be contrary to law or to morality, is void.

Illustrations.

(*a.*) A bequeaths 500 rupees to B on condition that he shall murder C. The bequest is void.

(*b.*) A bequeaths 5,000 rupees to his niece if she will desert her husband. The bequest is void.

* This Part applies to the wills of Hindus, &c., in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870, s. 2.

Act X. of 1865.

Fulfilment of condition precedent to vesting of legacy.

115. Where a will imposes a condition to be fulfilled before the legatee can take a vested interest in the thing bequeathed, the condition shall be considered to have been fulfilled if it has been substantially complied with.

Illustrations.

(*a.*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, D, and E. A marries with the written consent of B. C is present at the marriage. D sends a present to A previous to the marriage. E has been personally informed by A of his intentions, and has made no objection. A has fulfilled the condition.

(*b.*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, and D. D dies. A marries with the consent of B and C. A has fulfilled the condition.

(*c.*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, and D. A marries in the lifetime of B, C, and D, with the consent of B and C only. A has not fulfilled the condition.

(*d.*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, and D. A obtains the unconditional assent of B, C, and D to his marriage with E. Afterwards B, C, and D, capriciously retract their consent. A marries E. A has fulfilled the condition.

(*e.*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, and D. A marries without the consent of B, C, and D, but obtains their consent after the marriage. A has not fulfilled the condition.

(*f.*) A makes his will, whereby he bequeaths a sum of money to B if B shall marry with the consent of A's executors. B marries during the lifetime of A, and A afterwards expresses his approbation of the marriage. A dies. The bequest to B takes effect.

(*g.*) A legacy is bequeathed to A if he executes a certain document within a time specified in the will. The document is executed by A within a reasonable time, but not within the time specified in the will. A has not performed the condition, and is not entitled to receive the legacy.

Bequest to A, and, on failure of prior bequest, to B.

116. Where there is a bequest to one person, and a bequest of the same thing to another, if the prior bequest shall fail, the second bequest shall take effect upon the failure of the prior bequest, although the failure may not have occurred in the manner contemplated by the testator.

Illustrations.

(*a.*) A bequeaths a sum of money to his own children surviving him, and, if they all die under 18, to B. A dies without having ever had a child. The bequest to B takes effect.

(*b.*) A bequeaths a sum of money to B, on condition that he shall execute a certain document within three months after A's death, and, if he should neglect to do so, to C. B dies in the testator's lifetime. The bequest to C takes effect.

When second bequest not to take effect on failure of first.

117. Where the will shows an intention that the second bequest shall take effect only in the event of the first bequest failing in a particular manner, the second bequest shall not take effect unless the prior bequest fails in that particular manner.

Illustration.

A makes a bequest to his wife, but, in case she should die in his lifetime, bequeaths to B that which he had bequeathed to her. A and his wife perish together under circumstances which make it impossible to prove that she died before him. The bequest to B does not take effect.

Illustrations.

(*a.*) A bequeaths 1,000 rupees to the eldest son* of B. At the death of the testator, B has no son. The bequest is void.

(*b.*) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son* of C. At the death of the testator, C had no son. Afterwards, during the life of B, a son is born to C. Upon B's death the legacy goes to C's son.

(*c.*) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son* of C. At the death of the testator, C had no son; afterwards, during the life of B, a son named D is born to C. D dies; then B dies. The legacy goes to the representative of D.

(*d.*) A bequeaths his estate of Green Acre to B for life, and at his decease to the eldest son* of C. Up to the death of B, C has had no son. The bequest to C's eldest son is void.

(*e.*) A bequeaths 1,000 rupees to the eldest son* of C, to be paid to him after the death of B. At the death of the testator, C has no son, but a son is afterwards born to him during the life of B and is alive at B's death. C's son is entitled to the 1,000 rupees.

Bequest to person not in existence at testator's death, subject to prior bequest.

100. Where a bequest is made to a person not in existence at the time of the testator's death, subject to a prior bequest contained in the will, the later bequest shall be void unless it comprises the whole of the remaining interest of the testator in the thing bequeathed.

Illustrations.

(*a.*) Property is bequeathed to A for his life, and after his death to his eldest son* for life, and after the death of the latter to his eldest son. At the time of the testator's death, A has no son. Here the bequest to A's eldest son is a bequest to a person not in existence at the testator's death. It is not a bequest of the whole interest that remains to the testator. The bequest to A's eldest son for his life is void.

(*b.*) A fund is bequeathed to A for his life, and after his death to his daughters. A survives the testator. A has daughters, some of whom were not in existence at the testator's death. The bequest to A's daughters comprises the whole interest that remains to the testator in the thing bequeathed. The bequest to A's daughters is valid.

(*c.*) A fund is bequeathed to A for his life, and after his death to his daughters, with a direction that, if any of them marries under the age of eighteen, her portion shall be settled, so that it may belong to herself for life, and may be divisible among her children* after her death. A has no daughters living at the time of the testator's death, but has daughters born afterwards who survive him. Here the direction for a settlement has the effect, in the case of each daughter who marries under eighteen, of substituting, for the absolute bequest to her, a bequest to her merely for her life; that is to say, a bequest to a person not in existence at the time of the testator's death of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund is void.

(*d.*) A bequeaths a sum of money to B for life, and directs that upon the death of B, the fund shall be settled upon his daughters, so that the portion of each daughter may belong to herself for life, and may be divided among her children* after her death. B has no daughter living at the time of the testator's death. In this case the only bequest to the daughters of B is contained in the direction to settle the fund, and this direction amounts to a bequest, to persons not yet born, of a life-interest in the fund, that is to say, of something which is less than the whole interest that remains in the testator in the thing bequeathed. The direction to settle the fund upon the daughters of B is void.

Rule against perpetuity.

101. No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator's decease, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing bequeathed is to belong.

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* See s. 6, Act XXI., 1870.

Act X. of 1865.

(*c*.) An estate is bequeathed to A for life, and, if he marries, to the eldest son of B for life. B, at the date of the testator's death, had not had a son. The bequest over is void under section 92, and A is entitled to the estate during his life.

Bequest conditioned that it shall cease to have effect in case specified uncertain event shall happen or not happen.

121. A bequest may be made with the condition superadded that it shall cease to have effect in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Illustrations.

(*a*.) An estate is bequeathed to A for his life, with a proviso that, in case he shall cut down a certain wood, the bequest shall cease to have any effect. A cuts down the wood; he loses his life-interest in the estate.

(*b*.) An estate is bequeathed to A, provided that, if he marries under the age of 25 without the consent of the executors named in the will, the estate shall cease to belong to him. A marries under 25 without the consent of the executors. The estate ceases to belong to him.

(*c*.) An estate is bequeathed to A provided that, if he shall not go to England within three years after the testator's death, his interest in the estate shall cease. A does not go to England within the time prescribed. His interest in the estate ceases.

(*d*.) An estate is bequeathed to A, with a proviso that, if she becomes a nun, she shall cease to have any interest in the estate. A becomes a nun. She loses her interest under the will.

(*e*.) A fund is bequeathed to A for life, and after his death to B, if B shall be then living, with a proviso that, if B shall become a nun, the bequest to her shall cease to have any effect. B becomes a nun in the lifetime of A. She thereby loses her contingent interest in the fund.

122. In order that a condition that a bequest shall cease to have effect may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of a bequest as contemplated by section 107.

Such condition must not be invalid under section 107.

123. Where a bequest is made with a condition superadded that, unless the legatee shall perform a certain act, the subject-matter of the bequest shall go to another person, or the bequest shall cease to have effect, but no time is specified for the performance of the act, if the legatee takes any step which renders impossible or indefinitely postpones the performance of the act required, the legacy shall go as if the legatee had died without performing such act.

Result of legatee rendering impossible or indefinitely postponing act for which no time specified, and on non-performance of which subject-matter to go over.

Illustrations.

(*a*.) A bequest is made to A with a proviso that, unless he enters the army, the legacy shall go over to B. A takes holy orders, and thereby renders it impossible that he should fulfil the condition. B is entitled to receive the legacy.

(*b*.) A bequest is made to A, with a proviso that it shall cease to have any effect if he does not marry B's daughter. A marries a stranger, and thereby indefinitely postpones the fulfilment of the condition. The bequest ceases to have effect.

124. Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be pre-

Performance of condition, precedent or subsequent within specified time.

Further time in case of fraud.

Illustrations.

(*a.*) A bequeaths 1,000 rupees to the eldest son* of B. At the death of the testator, B has no son. The bequest is void.

(*b.*) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son* of C. At the death of the testator, C had no son. Afterwards, during the life of B, a son is born to C. Upon B's death the legacy goes to C's son.

(*c.*) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son* of C. At the death of the testator, C had no son; afterwards, during the life of B, a son named D is born to C. D dies; then B dies. The legacy goes to the representative of D.

(*d.*) A bequeaths his estate of Green Acre to B for life, and at his decease to the eldest son* of C. Up to the death of B, C has had no son. The bequest to C's eldest son is void.

(*e.*) A bequeaths 1,000 rupees to the eldest son* of C, to be paid to him after the death of B. At the death of the testator, C has no son, but a son is afterwards born to him during the life of B and is alive at B's death. C's son is entitled to the 1,000 rupees.

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(*c.*) A fund is bequeathed to A for his life, and after his death to his daughters, with a direction that, if any of them marries under the age of eighteen, her portion shall be settled, so that it may belong to herself for life, and may be divisible among her children* after her death. A has no daughters living at the time of the testator's death, but has daughters born afterwards who survive him. Here the direction for a settlement has the effect, in the case of each daughter who marries under eighteen, of substituting, for the absolute bequest to her, a bequest to her merely for her life; that is to say, a bequest to a person not in existence at the time of the testator's death of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund is void.

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* See s. 6, Act XXI., 1870.

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(*b.*) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son* of C. At the death of the testator, C had no son. Afterwards, during the life of B, a son is born to C. Upon B's death the legacy goes to C's son.

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(*a.*) Property is bequeathed to A for his life, and after his death to his eldest son* for life, and after the death of the latter to his eldest son. At the time of the testator's death, A has no son. Here the bequest to A's eldest son is a bequest to a person not in existence at the testator's death. It is not a bequest of the whole interest that remains to the testator. The bequest to A's eldest son for his life is void.

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(*c.*) A fund is bequeathed to A for his life, and after his death to his daughters, with a direction that, if any of them marries under the age of eighteen, her portion shall be settled, so that it may belong to herself for life, and may be divisible among her children* after her death. A has no daughters living at the time of the testator's death, but has daughters born afterwards who survive him. Here the direction for a settlement has the effect, in the case of each daughter who marries under eighteen, of substituting, for the absolute bequest to her, a bequest to her merely for her life; that is to say, a bequest to a person not in existence at the time of the testator's death of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund is void.

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* See s. 6, Act XXI., 1870.

When deficiency of assets to pay legacies, specific legacy not to abate with general legacies.

136. If there be a deficiency of assets to pay legacies, a specific legacy is not liable to abate with the general legacies. Act X. of 1865.

PART XX.*

OF DEMONSTRATIVE LEGACIES.

Demonstrative legacy defined.

137. Where a testator bequeaths a certain sum of money or a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute the same the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative.

Explanation.—The distinction between a specific legacy and a demonstrative legacy consists in this, that

where specified property is given to the legatee, the legacy is specific:

where the legacy is directed to be paid out of a specified property, it is demonstrative.

Illustrations.

(*a.*) A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The legacy to B is specific; the legacy to C is demonstrative.

(*b.*) A bequeaths to B—

"ten bushels of the corn which shall grow in his field of Greenacre:"

"80 chests of the indigo which shall be made at his factory of Rampur:"

"10,000 rupees out of his five per cent. promissory notes of the Government of India:"

an annuity of 500 rupees "from his funded property:"

"1,000 rupees out of the sum of 2,000 rupees due to him by C."

A bequeaths to B an annuity, and directs it to be paid out of the rents arising from his taluq of Ramnagar.

A bequeaths to B—

"10,000 rupees out of his estate at Ramnagar," or charges it on his estate at Ramnagar:

"10,000 rupees being his share of the capital embarked in a certain business."

Each of these bequests is demonstrative.

Order of payment when legacy directed to be paid out of fund the subject of specific legacy.

138. Where a portion of a fund is specifically bequeathed, and a legacy is directed to be paid out of the same fund, the portion specifically bequeathed shall first be paid to the legatee, and the demonstrative legacy shall be paid out of the residue of the fund, and, so far as the residue shall be deficient, out of the general assets of the testator.

Illustration.

A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees, to be paid out of the debt due to him from W. The debt

* This Part applies to the wills of Hindus, &c., in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870, s. 2.

Illustrations.

(*a.*) A bequeaths 1,000 rupees to the eldest son* of B. At the death of the testator, B has no son. The bequest is void.

(*b.*) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son* of C. At the death of the testator, C had no son. Afterwards, during the life of B, a son is born to C. Upon B's death the legacy goes to C's son.

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(*a.*) A bequeaths 1,000 rupees to the eldest son* of B. At the death of the testator, B has no son. The bequest is void.

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(*c.*) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son* of C. At the death of the testator, C had no son; afterwards, during the life of B, a son named D is born to C. D dies; then B dies. The legacy goes to the representative of D.

(*d.*) A bequeaths his estate of Green Acre to B for life, and at his decease to the eldest son* of C. Up to the death of B, C has had no son. The bequest to C's eldest son is void.

(*e.*) A bequeaths 1,000 rupees to the eldest son* of C, to be paid to him after the death of B. At the death of the testator, C has no son, but a son is afterwards born to him during the life of B and is alive at B's death. C's son is entitled to the 1,000 rupees.

Bequest to person not in existence at testator's death, subject to prior bequest.

100. Where a bequest is made to a person not in existence at the time of the testator's death, subject to a prior bequest contained in the will, the later bequest shall be void unless it comprises the whole of the remaining interest of the testator in the thing bequeathed.

Illustrations.

(*a.*) Property is bequeathed to A for his life, and after his death to his eldest son* for life, and after the death of the latter to his eldest son. At the time of the testator's death, A has no son. Here the bequest to A's eldest son is a bequest to a person not in existence at the testator's death. It is not a bequest of the whole interest that remains to the testator. The bequest to A's eldest son for his life is void.

(*b.*) A fund is bequeathed to A for his life, and after his death to his daughters. A survives the testator. A has daughters, some of whom were not in existence at the testator's death. The bequest to A's daughters comprises the whole interest that remains to the testator in the thing bequeathed. The bequest to A's daughters is valid.

(*c.*) A fund is bequeathed to A for his life, and after his death to his daughters, with a direction that, if any of them marries under the age of eighteen, her portion shall be settled, so that it may belong to herself for life, and may be divisible among her children* after her death. A has no daughters living at the time of the testator's death, but has daughters born afterwards who survive him. Here the direction for a settlement has the effect, in the case of each daughter who marries under eighteen, of substituting, for the absolute bequest to her, a bequest to her merely for her life; that is to say, a bequest to a person not in existence at the time of the testator's death of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund is void.

(*d.*) A bequeaths a sum of money to B for life, and directs that upon the death of B, the fund shall be settled upon his daughters, so that the portion of each daughter may belong to herself for life, and may be divided among her children* after her death. B has no daughter living at the time of the testator's death. In this case the only bequest to the daughters of B is contained in the direction to settle the fund, and this direction amounts to a bequest, to persons not yet born, of a life-interest in the fund, that is to say, of something which is less than the whole interest that remains in the testator in the thing bequeathed. The direction to settle the fund upon the daughters of B is void.

Rule against perpetuity.

101. No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator's decease, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing bequeathed is to belong.

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* See s. 6, Act XXI., 1870.

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(*c.*) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son* of C. At the death of the testator, C had no son; afterwards, during the life of B, a son named D is born to C. D dies; then B dies. The legacy goes to the representative of D.

(*d.*) A bequeaths his estate of Green Acre to B for life, and at his decease to the eldest son* of C. Up to the death of B, C has had no son. The bequest to C's eldest son is void.

(*e.*) A bequeaths 1,000 rupees to the eldest son* of C, to be paid to him after the death of B. At the death of the testator, C has no son, but a son is afterwards born to him during the life of B and is alive at B's death. C's son is entitled to the 1,000 rupees.

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(*a.*) Property is bequeathed to A for his life, and after his death to his eldest son* for life, and after the death of the latter to his eldest son. At the time of the testator's death, A has no son. Here the bequest to A's eldest son is a bequest to a person not in existence at the testator's death. It is not a bequest of the whole interest that remains to the testator. The bequest to A's eldest son for his life is void.

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(*a.*) Property is bequeathed to A for his life, and after his death to his eldest son* for life, and after the death of the latter to his eldest son. At the time of the testator's death, A has no son. Here the bequest to A's eldest son is a bequest to a person not in existence at the testator's death. It is not a bequest of the whole interest that remains to the testator. The bequest to A's eldest son for his life is void.

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101. No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator's decease, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing bequeathed is to belong.

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* See s. 6, Act XXI., 1870.

Act X. of 1865.

157. In the absence of any direction in the will, where there is a specific bequest of stock in a joint-stock company, if any call or other payment is due from the testator at the time of his death in respect of such stock, such call or payment shall, as between the testator's estate and the legatee, be borne by such estate;

Exoneration of specific legatee's stock in joint-stock company.

but, if any call or other payment shall, after the testator's death, become due in respect of such stock, the same shall, as between the testator's estate and the legatee, be borne by the legatee if he accept the bequest.

Illustrations.

(*a.*) A bequeathed to B his shares in a certain railway. At A's death there was due from him the sum of 5*l.* in respect of each share, being the amount of a call which had been duly made, and the sum of 5*s.* in respect of each share, being the amount of interest which had accrued due in respect of the call. These payments must be borne by A's estate.

(*b.*) A has agreed to take 50 shares in an intended joint-stock company, and has contracted to pay up 5*l.* in respect of each share, which sum must be paid before his title to the shares can be completed. A bequeaths these shares to B. The estate of A must make good the payments which were necessary to complete A's title.

(*c.*) A bequeaths to B his shares in a certain railway. B accepts the legacy. After A's death, a call is made in respect of the shares. B must pay the call.

(*d.*) A bequeaths to B his shares in a joint-stock company. B accepts the bequest. Afterwards the affairs of the company are wound up, and each shareholder is called upon for contribution. The amount of the contribution must be borne by the legatee.

(*e.*) A is the owner of ten shares in a railway company. At a meeting held during his lifetime a call is made of 3*l.* per share payable by three instalments. A bequeaths his shares to B, and dies between the day fixed for the payment of the first and the day fixed for the payment of the second instalment, and without having paid the first instalment. A's estate must pay the first instalment, and B, if he accepts the legacy, must pay the remaining instalments.

PART XXIII.*

Of Bequests of Things described in General Terms.

158. If there be a bequest of something described in general terms, the executor must purchase for the legatee what may reasonably be considered to answer the description.

Bequest of thing described in general terms.

Illustrations.

(*a.*) A bequeaths to B *a* pair of carriage-horses, or *a* diamond-ring. The executor must provide the legatee with such articles if the state of the assets will allow it.

(*b.*) A bequeaths to B "*his* pair of carriage-horses." A had no carriage-horses at the time of his death. The legacy fails.

PART XXIV.*

Of Bequests of the Interest or Produce of a Fund.

159. Where the interest or produce of a fund is bequeathed to any person, and the will affords no indication of an intention that the enjoyment of the bequest should be of limited duration, the principal as well as the interest shall belong to the legatee.

Bequest of interest or produce of fund.

* This Part applies to the wills of Hindus, &c., in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870, s. 2.

Act X. of 1865.

Illustrations.

(*a*.) A bequeaths to B the interest of his five per cent. promissory notes of the Government of India. There is no other clause in the will affecting those securities. B is entitled to A's five per cent. promissory notes of the Government of India.

(*b*.) A bequeaths the interest of his 5½ per cent. promissory notes of the Government of India to B for his life, and after his death to C. B is entitled to the interest of the notes during his life; and C is entitled to the notes upon B's death.

(*c*.) A bequeaths to B the rents of his lands at X. B is entitled to the lands.

PART XXV.*

OF BEQUESTS OF ANNUITIES.

160. Where an annuity is created by will, the legatee is entitled to receive it for his life only, unless a contrary intention appears by the will. And this rule shall not be varied by the circumstance that the annuity is directed to be paid out of the property generally, or that a sum of money is bequeathed to be invested in the purchase of it.

Annuity created by will payable for life only, unless contrary intention appears by will.

Illustrations.

(*a*.) A bequeaths to B 500 rupees a year. B is entitled during his life to receive the annual sum of 500 rupees.

(*b*.) A bequeaths to B the sum of 500 rupees monthly. B is entitled during his life to receive the sum of 500 rupees every month.

(*c*.) A bequeaths an annuity of 500 rupees to B for life, and on B's death to C. B is entitled to an annuity of 500 rupees during his life. C, if he survives B, is entitled to an annuity of 500 rupees from B's death until his own death.

161. Where the will directs that an annuity shall be provided for any person out of the proceeds of property, or out of property generally, or where money is bequeathed to be invested in the purchase of any annuity for any person, on the testator's death the legacy vests in interest in the legatee, and he is entitled, at his option, to have an annuity purchased for him, or to receive the money appropriated for that purpose by the will.

Period of vesting where will directs that annuity be provided out of proceeds of property, or out of property generally, or where money bequeathed to be invested in purchase of annuity.

Illustrations.

(*a*.) A by his will directs that his executors shall, out of his property, purchase an annuity of 1,000 rupees for B. B is entitled, at his option, to have an annuity of 1,000 rupees for his life purchased for him, or to receive such a sum as will be sufficient for the purchase of such an annuity.

(*b*.) A bequeaths a fund to B for his life, and directs that after B's death it shall be laid out in the purchase of an annuity for C. B and C survive the testator. C dies in B's lifetime. On B's death the fund belongs to the representative of C.

162. Where an annuity is bequeathed, but the assets of the testator are not sufficient to pay all the legacies given by the will, the annuity shall abate in the same proportion as the other pecuniary legacies given by the will.

Abatement of annuity.

* This Part applies to the wills of Hindus, &c., in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870, s. 2.

163. Where there is a gift of an annuity and a residuary gift, the whole of the annuity is to be satisfied before any part of the residue is paid to the residuary legatee, and, if necessary, the capital of the testator's estate shall be applied for that purpose.

Where gift of annuity and residuary gift, whole annuity to be first satisfied.

PART XXVI.*

OF LEGACIES TO CREDITORS AND PORTIONERS.

164. Where a debtor bequeaths a legacy to his creditor, and it does not appear from the will that the legacy is meant as a satisfaction of the debt, the creditor shall be entitled to the legacy as well as to the amount of the debt.

Creditor *primâ facie* entitled to legacy as well as debt.

165. Where a parent who is under obligation by contract to provide a portion for a child fails to do so, and afterwards bequeaths a legacy to the child, and does not intimate by his will that the legacy is meant as a satisfaction of the portion, the child shall be entitled to receive the legacy as well as the portion.

Child *primâ facie* entitled to legacy as well as portion.

Illustration.

A, by articles entered into in contemplation of his marriage with B, covenanted that he would pay to each of the daughters of the intended marriage a portion of 20,000 rupees on her marriage. This covenant having been broken, A bequeaths 20,000 rupees to each of the married daughters of himself and B. The legatees are entitled to the benefit of this bequest in addition to their portions.

166. No bequest shall be wholly or partially adeemed by a subsequent provision made by settlement or otherwise for the legatee.

No ademption by subsequent provision for legatee.

Illustrations.

(*a.*) A bequeaths 20,000 rupees to his son B. He afterwards gives to B the sum of 20,000 rupees. The legacy is not thereby adeemed.

(*b.*) A bequeaths 40,000 rupees to B, his orphan-niece, whom he had brought up from her infancy. Afterwards, on the occasion of B's marriage, A settles upon her the sum of 30,000 rupees. The legacy is not thereby diminished.

PART XXVII.*

OF ELECTION.

167. Where a man, by his will, professes to dispose of something which he has no right to dispose of, the person to whom the thing belongs shall elect either to confirm such disposition or to dissent from it, and in the latter case he shall give up any benefits which may have been provided for him by the will.

Circumstances in which election takes place.

* This Part applies to the wills of Hindus, &c., in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870, s. 2.

Act X. of 1865.

Devolution of interest relinquished by owner.

168. The interest so relinquished shall devolve as if it had not been disposed of by the will in favour of the legatee, subject, nevertheless, to the charge of making good to the disappointed legatee the amount or value of the gift attempted to be given to him by the will.

Testator's belief as to his ownership immaterial.

169. This rule will apply whether the testator does or does not believe that which he professes to dispose of by his will to be his own.

Illustrations.

(*a.*) The farm of Sultánpur was the property of C. A bequeathed it to B, giving a legacy of 1,000 rupees to C. C has elected to retain his farm of Sultánpur, which is worth 800 rupees. C forfeits his legacy of 1,000 rupees, of which 800 rupees goes to B, and the remaining 200 rupees falls into the residuary bequest, or devolves according to the rules of intestate succession, as the case may be.

(*b.*) A bequeaths an estate to B in case B's elder brother (who is married and has children) shall leave no issue living at his death. A also bequeaths to C a jewel, which belongs to B. B must elect to give up the jewel, or to lose the estate.

(*c.*) A bequeaths to B 1,000 rupees, and to C an estate which will, under a settlement belong to B if his elder brother (who is married and has children) shall leave no issue living at his death. B must elect to give up the estate, or to lose the legacy.

(*d.*) A, a person of the age of 18, domiciled in British India, but owning real property in England, to which C is heir-at-law, bequeaths a legacy to C, and, subject thereto, devises and bequeaths to B "all his property whatsoever and wheresoever," and dies under 21. The real property in England does not pass by the will. C may claim his legacy without giving up the real property in England.

Bequest for man's benefit how regarded for purpose of election.

170. A bequest for a man's benefit is, for the purpose of election, the same thing as a bequest made to himself.

Illustration.

The farm of Sultánpur Khurd being the property of B, A bequeathed it to C, and bequeathed another farm, called Sultánpur Buzurg, to his own executors, with a direction that it should be sold, and the proceeds, applied in payment of B's debts. B must elect whether he will abide by the will, or keep his farm of Sultánpur Khurd in opposition to it.

Person deriving benefit indirectly not put to election.

171. A person taking no benefit directly under the will, but deriving a benefit under it indirectly, is not put to his election.

Illustration.

The lands of Sultánpur are settled upon C for life, and, after his death, upon D, his only child. A bequeaths the lands of Sultánpur to B, and 1,000 rupees to C. C dies intestate, shortly after the testator, and without having made any election. D takes out administration to C, and as administrator elects on behalf of C's estate to take under the will. In that capacity he receives the legacy of 1,000 rupees, and accounts to B for the rents of the lands of Sultánpur which accrued after the death of the testator, and before the death of C. In his individual character he retains the lands of Sultánpur in opposition to the will.

Person taking in individual capacity under will may in other character elect to take in opposition.

172. A person who, in his individual capacity, takes a benefit under the will, may, in another character, elect to take in opposition to the will.

Illustration.

The estate of Sultánpur is settled upon A for life, and after his death upon B. A leaves the estate of Sultánpur to D, and 2,000 rupees to B, and 1,000 rupees to C, who is B's only child. B dies intestate, shortly after the testator, without having made an election. C takes out administration to B, and as administrator elects to keep the estate of Sultánpur in opposition to the will, and to relinquish the legacy of 2,000 rupees. C may do this, and yet claim his legacy of 1,000 rupees under the will.

Exception to the six last rules.—Where a particular gift is expressed in the will to be in lieu of something belonging to the legatee, which is also in terms disposed of by the will, if the legatee claims that thing, he must relinquish the particular gift, but he is not bound to relinquish any other benefit given to him by the will.

Illustration.

Under A's marriage-settlement his wife is entitled, if she survives him, to the enjoyment of the estate of Sultánpur during her life.

A by his will bequeaths to his wife an annuity of 200*l.* during her life, in lieu of her interest in the estate of Sultánpur, which estate he bequeaths to his son. He also gives his wife a legacy of 1,000*l.* The widow elects to take what she is entitled to under the settlement. She is bound to relinquish the annuity, but not the legacy of 1,000*l.*

When acceptance of benefit given by will constitutes election to take under will.

173. Acceptance of a benefit given by the will constitutes an election by the legatee to take under the will, if he has knowledge of his right to elect, and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives inquiry into the circumstances.

Illustrations.

(*a.*) A is owner of an estate called Sultánpur Khurd, and has a life-interest in another estate called Sultánpur Buzurg, to which, upon his death, his son B will be absolutely entitled. The will of A gives the estate of Sultánpur Khurd to B, and the estate of Sultánpur Buzurg to C. B, in ignorance of his own right to the estate of Sultánpur Buzurg, allows C to take possession of it, and enters into possession of the estate of Sultánpur Khurd. B has not confirmed the bequest of Sultánpur Buzurg to C.

(*b.*) B, the eldest son of A is the possessor of an estate called Sultánpur. A bequeaths Sultánpur to C, and to B the residue of A's property. B, having been informed by A's executors that the residue will amount to 5,000 rupees, allows C to take possession of Sultánpur. He afterwards discovers that the residue does not amount to more than 500 rupees. B has not confirmed the bequest of the estate of Sultánpur to C.

Presumption arising from enjoyment by legatee for two years.

174. Such knowledge or waiver of inquiry shall, in the absence of evidence to the contrary, be presumed if the legatee has enjoyed for two years the benefits provided for him by the will without doing any act to express dissent.

Confirmation of bequest by act of legatee.

175. Such knowledge or waiver of inquiry may be inferred from any act of the legatee which renders it impossible to place the persons interested in the subject-matter of the bequest in the same condition as if such act had not been done.

Illustration.

A bequeaths to B an estate to which C is entitled, and to C a coal-mine. C takes possession of the mine, and exhausts it. He has thereby confirmed the bequest of the estate to B.

Act X. of 1865.

176. If the legatee shall not, within one year after the death of the testator, signify to the testator's representatives his intention to conform or to dissent from the will, the representatives shall, upon the expiration of that period, require him to make his election;

When testator's representatives may call upon legatee to elect.

and if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the will.

Effect of non-compliance.

177. In case of disability the election shall be postponed until the disability ceases, or until the election shall be made by some competent authority.

Postponement of election in case of disability.

PART XXVIII.*

Of Gifts in Contemplation of Death.

178. A man may dispose, by gift made in contemplation of death, of any moveable property which he could dispose of by will.

Property transferable by gift made in contemplation of death.

A gift is said to be made in contemplation of death where a man who is ill, and expects to die shortly of his illness, delivers to another the possession of any moveable property to keep as a gift in case the donor shall die of that illness.

When gift said to be made in contemplation of death.

Such gift resumable. Such a gift may be resumed by the giver.

It does not take effect if he recovers from the illness during which it was made; nor if he survives the person to whom it was made.

When it fails.

Illustrations.

(*a.*) A, being ill, and in expectation of death, delivers to B, to be retained by him in case of A's death—

a watch:
a bond granted by C to A:
a bank-note:
a promissory note of the Government of India endorsed in blank:
a bill of exchange endorsed in blank:
certain mortgage-deeds.

A dies of the illness during which he delivered these articles.
B is entitled to—

the watch:
the debt secured by C's bond:
the bank-note:
the promissory note of the Government of India:
the bill of exchange:
the money secured by the mortgage-deeds.

(*b.*) A being ill, and in expectation of death, delivers to B the key of a trunk or the key of a warehouse in which goods of bulk belonging to A are deposited, with the intention of giving him the control over the contents of the trunk, or over the deposited goods, and desires him to keep them in case of A's death. A dies of the illness during which he delivered these articles. B is entitled to the trunk and its contents, or to A's goods of bulk in the warehouse.

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* This Part does not apply to Hindus.—Act XXI. of 1870.

(*c.*) A, being ill, and in expectation of death, puts aside certain articles in separate parcels, and marks upon the parcels respectively the names of B and C. The parcels are not delivered during the life of A. A dies of the illness during which he set aside the parcels. B and C are not entitled to the contents of the parcels. Act X. of 1865.

PART XXIX.*

Of Grant of Probate and Letters of Administration.

Character and property of executor or administrator as such.

179. The executor or administrator, as the case may be, of a deceased person, is his legal representative for all purposes, and all the property† of the deceased person vests in him as such.

Administration with copy annexed of authenticated copy of will proved abroad.

180. When a will has been proved and deposited in a Court of competent jurisdiction, situated beyond the limits of the province, whether in the British dominions or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Probate only to appointed executor.

181. Probate can be granted only to an executor appointed by the will.

Appointment express or implied.

182. The appointment may be express or by necessary implication.‡

Illustrations.

(*a.*) A wills that C be his executor if B will not. B is appointed executor by implication.

(*b.*) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law§ C, and adds, "but should the within named C be not living, I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(*c.*) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words: "I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates." The nephew is appointed an executor by implication.

Persons to whom probate cannot be granted.

183. Probate cannot be granted to any person who is a minor or is of unsound mind, nor to a married woman without the previous consent of her husband.

Grant of probate to several executors simultaneously or at different times.

184. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Illustration.

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first and then to A.

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* Compare Act V. of 1881, Part II.

† This does not include property vested in the deceased as executor or administrator under Act X. of 1865.—12 Ben. 428, 429.

‡ 7 Bom., A. C. J., 64: 7 Ben. 563.

§ See s. 6, Act XXI., 1870.

Act X. of 1865.

Separate probate of codicil discovered after grant of probate.

185 If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

Procedure when different executors appointed by codicil.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.

Accrual of representation to surviving executor.

186. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

Right as executor or legatee when established.

187.* No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction within the province shall have granted probate of the will under which the right is claimed, or shall have granted letters of administration under section 180.

Effect of probate.

188. Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor, as such.

To whom administration may not be granted.

189. Letters of administration cannot be granted to any person who is a minor or is of unsound mind,

nor to a married woman without the previous consent of her husband.

Right to intestate's property when established.

190. No right to any part of the property of a person who has died intestate can be established in any Court of Justice, unless letters of administration have first been granted by a Court of competent jurisdiction.

Effect of letters of administration.

191. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

Acts not validated by administration.

192. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

Grant of administration where executor has not renounced.

193. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued, calling upon the executor to accept or renounce his executorship;

Exception.

except that, when one or more of several executors have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

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* This section applies to the wills of Hindus, &c., in the Lower Provinces and in the towns of Madras and Bombay.—Act XXI. of 1870.

Act X. of 1865.

Form and effect of renunciation of executorship.

194. The renunciation may be made orally in the presence of the Judge or by a writing signed by the person renouncing, and, when made, shall preclude him from ever thereafter applying for probate of the will appointing him executor.

Procedure where executor renounces or fails to accept within time limited.

195. If the executor renounce, or fail to accept, the executorship within the time limited for the acceptance or refusal thereof, the will may be proved, and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.*

Grant of administration to universal or residuary legatee.

196. When the deceased has made a will, but has not appointed an executor; or

when he has appointed an executor who is legally incapable, or refuses to act, or has died before the testator, or before he has proved the will; or

when the executor dies after having proved the will, but before he has administered all the estate of the deceased;†

an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

Right to administration of representative of deceased residuary legatee.

197. When a residuary legatee who has a beneficial interest, survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

Grant of administration where no executor nor residuary legatee, nor representative of such legatee.

198. When there is no executor, and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate,* or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

Citation before grant of administration to legatee other than universal or residuary.

199. Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.

Order in which connections entitled to administer.

200. When the deceased has died intestate, those who are connected with him either by marriage or by consanguinity are entitled to obtain letters of administration of his estate and effects in the order and according to the rules hereinafter stated.

Administration to widow unless Court see cause to exclude her.

201. If the deceased has left a widow, administration shall be granted to the widow unless the Court shall see cause to exclude her, either on the ground of some personal disqualification, or because she has no interest in the estate of the deceased.

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* See s. 6, Act XXI., 1870.

† 12 Ben. 423, 427.

Act X. of 1865.

Illustrations.

(*a.*) The widow is a lunatic, or has committed adultery, or has been barred by her marriage-settlement of all interest in her husband's estate; there is cause for excluding her from the administration.

(*b.*) The widow has married again since the decease of her husband; this is not good cause for her exclusion.

Association with widow in administration.

202. If the Judge think proper, he may associate any person or persons with the widow in the administration, who would be entitled solely to the administration, if there were no widow.

Administration where no widow, or widow excluded.

203. If there be no widow, or if the Court see cause to exclude the widow, it shall commit the administration to the person or persons who would be beneficially entitled to the estate according to the rules for the distribution of an intestate's estate:

Proviso.

Provided that, when the mother of the deceased shall be one of the class of persons so entitled, she shall be solely entitled to administration.

Title of kindred to administration.

204. Those who stand in equal degree of kindred to the deceased are equally entitled to administration.*

Right of widower to administration of wife's estate.

205. The husband, surviving his wife, has the same right of administration of her estate as the widow has in respect of the estate of her husband.

Grant of administration to creditor.

206. When there is no person connected with the deceased by marriage or consanguinity who is entitled to letters of administration, and willing to act, they may be granted to a creditor.

Administration where property left in British India.

207. Where the deceased has left property in British India, letters of administration must be granted according to the foregoing rules, although he may have been a domiciled inhabitant of a country in which the law relating to testate and intestate succession differs from the law of British India.

PART XXX.†

Of Limited Grants.

(a.) Grants limited in Duration.

Probate of copy or draft of lost will.

208. When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident, and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

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* Ben., Short Notes of Cases, III.

† Compare Act V. of 1881, Ch. III., with sub-parts (*a*) to (*f*).

209. When the will has been lost or destroyed, and no copy has been made, nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

Probate of contents of lost or destroyed will.

210. When the will is in the possession of a person residing out of the province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

Probate of copy where original exists.

211. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it be produced.

Administration until will produced.

(b.) Grants for the Use and Benefit of others having Right.

212. When any executor is absent from the province in which application is made, and there is no executor within the province willing to act, letters of administration, with the will annexed, may be granted to the attorney* of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

Administration, with will annexed, to attorney of absent executor.

213. When any person to whom, if present, letters of administration with the will annexed might be granted, is absent from the province, letters of administration with the will annexed may be granted to his attorney,* limited as above mentioned.

Administration, with will annexed, to attorney of absent person, who, if present, would be entitled to administer.

214. When a person entitled to administration in case of intestacy is absent from the province, and no person equally entitled is willing to act, letters of administration may be granted to the attorney of the absent person, limited as before mentioned.

Administration to attorney of absent person entitled to administer in case of intestacy.

215. When a minor is sole executor or sole residuary legatee, letters of administration, with the will annexed, may be granted to the legal guardian of such minor, or to such other person as the Court shall think fit, until the minor shall have completed the age of eighteen years, at which period, and not before, probate of the will shall be granted to him.

Administration during minority of sole executor or residuary legatee.

216. When there are two or more minor executors, and no executor who has attained majority, or two or more residuary legatees, and no residuary legatee who has attained majority, the grant shall be limited until one of them shall have completed the age of eighteen years.

Administration during minority of several executors or residuary legatees.

217. If a sole executor, or a sole universal or residuary legatee or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of

Administration for use and benefit of lunatic *jus habens*.

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* The attorney must be within the jurisdiction of the Court.—4 Ben. App. 49.

Act X. of 1865.

intestates' estates, be a lunatic, letters of administration, with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the Court may think fit to appoint, for the use and benefit of the lunatic until he shall become of sound mind.

Administration *pendente lite*.

218. Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate, and every such administrator shall be subject to the immediate control of the Court, and shall act under its direction.

(c.) For Special Purposes.

Probate limited to purpose specified in will.

219. If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and if he should appoint an attorney to take administration on his behalf, the letters of administration, with the will annexed, shall accordingly be limited.

Administration with will annexed limited to particular purpose.

220. If an executor appointed generally give an authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration, with the will annexed, shall be limited accordingly.

Administration limited to property in which person has beneficial interest.

221. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the person beneficially interested in the property, or to some other person on his behalf.

Administration limited to suit.

222. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other Court between the parties, or in any other parties, touching the matters at issue in the said cause or suit, and until a final decree shall be made therein, and carried into complete execution.

Administration limited to purpose of becoming party to suit to be brought against administrator.

223. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has been granted is absent from the province within which the Court that has granted the probate or letters of administration is situate, it shall be lawful for such Court to grant, to any person whom it may think fit, letters of administration, limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

224. In any case in which it may appear necessary for preserving the property of a deceased person, the Court within whose district any of the property is situate may grant, to any person whom such Court may think fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

Administration limited to collection, and preservation of deceased's property.

225. When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor shall, at time of the death of such person, be resident out of the province, and it shall appear to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof, other than the person who, under ordinary circumstances, would be entitled to a grant of administration, it shall be lawful for the Judge, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate, and probability that it will be properly administered, to appoint such person as he shall think fit to be administrator ;

Appointment, as administrator, of person other than one who, under ordinary circumstances, would be entitled to administration.

and in every such case letters of administration may be limited or not as the Judge shall think fit.

(d.) Grants with Exception.

226. Whenever the nature of the case requires that an exception be made, probate of a will, or letters of administration with the will annexed, shall be granted subject to such exception.

Probate or administration with will annexed, subject to exception.

227. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

Administration with exception.

(e.) Grants of the Rest.

228. Whenever a grant, with exception of probate or letters of administration, with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

Probate or administration of rest.

(f.) Grants of Effects unadministered.

229. If the executor to whom probate has been granted have died leaving part of the testator's estate unadministered, a new representative may* be appointed for the purpose of administering such part of the estate.

Grant of effects unadministered.

230. In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant

Rules as to grants of effects unadministered.

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* 12 Beng. 428.

Act X. of 1865.

letters of administration to those persons only to whom original grants might have been made.*

Administration when limited grant expired, and still some part of estate unadministered.

231. When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.†

(g.) Alteration in Grants.†

What errors may be rectified by Court.

232. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

Procedure where codicil discovered after grant of administration with will annexed.

233. If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

(h.) Revocation of Grants.‡

Revocation or annulment for just cause.

234. The grant of probate or letters of administration may be revoked or annulled for just cause.

"Just cause."

Explanation.—Just cause is—

1st, that the proceedings to obtain the grant were defective in substance;

2nd, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case;

3rd, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;

4th, that the grant has become useless and inoperative through circumstances;

5th, that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Part XXXIV. of this Act, or has exhibited under that Part an inventory or account which is untrue in a material respect.§

Illustrations.

(*a.*) The Court by which the grant was made had no jurisdiction.

(*b.*) The grant was made without citing parties who ought to have been cited.

(*c.*) The will of which probate was obtained was forged or revoked.

(*d.*) A obtained letters of administration to the estate of B as his widow, but it has since transpired that she was never married to him.

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* 12 Beng. 428; see Act XXI. of 1870, s. 6.
† See Act XXI. of 1870, s. 6.
‡ Compare Act V. of 1881, Ch. IV.
§ Cl. 5 has been added by Act VI. of 1889, s. 2.

(*e.*) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(*f.*) Since probate was granted, a later will has been discovered.

(*g.*) Since probate was granted, codicil has been discovered, which revokes or adds to the appointment of executors under the will.

(*h.*) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.

PART XXXI.*

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

Jurisdiction of District Judge in granting and revoking probates, &c.

235. The District Judge shall have jurisdiction in granting and revoking† probates and letters of administration in all cases within his district.

Power to appoint Delegate of District Judge to deal with non-contentious cases.

235A.‡ The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit, to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe:

Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

Persons so appointed shall be called "District Delegates."

District Judge's powers as to grant of probate and administration.

236. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

District Judge may order person to produce testamentary papers.

237. The District Judge may order any person to produce and bring into Court any paper or writing, being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person;

and if it be not shown that any such paper or writing in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined respecting the same;

and such person shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code, in case of default in not attending, or in not answering such questions, or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit, and had made such default,

and the costs of the proceeding shall be in the discretion of the Judge.

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* Compare Act V. of 1881, Ch. V.

† 2 N.-W. P. 268.

‡ S. 235A has been inserted by Act VI. of 1881, s. 2.

Act X. of 1865.

238. The proceedings of the Court of the District Judge in relation to the granting of probate and letters of administration shall, except as hereinafter otherwise provided, be regulated so far as the circumstances of the case will admit by the Code of Civil Procedure.*

Proceedings of District Judge's Court in relation to probate and administration.

239. Until probate be granted of the will of a deceased person or an administrator of his estate be constituted, the District Judge within whose jurisdiction any part of the property of the deceased person is situate is authorized and required to interfere for the protection of such property at the instance of any person claiming to be interested therein, and in all other cases where the Judge considers that the property incurs any risk of loss or damage; and for that purpose, if he shall see fit, to appoint an officer to take and keep possession of the property.

When and how District Judge to interfere for protection of property.

240. Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it shall appear by a petition, verified as hereinafter mentioned of the person applying for the same, that the testator or intestate, as the case may be, at the time of his decease, had a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Judge.

When probate or administration may be granted by District Judge.

241. When the application is made to the Judge of a District in which the deceased had no fixed abode at the time of his death, it shall be in the discretion of the Judge to refuse the application, if, in his judgment, it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, to grant them absolutely or limited to the property within his own jurisdiction.

Disposal of application made to Judge of District in which deceased had no fixed abode.

241A.† Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death resided within the jurisdiction of such Delegate.

Probate and letters of administration may be granted by Delegate.

242. Probate or letters of administration shall have effect over all the property and estate, moveable or immoveable, of the deceased, throughout the province in which the same is "or are,"‡ granted, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted:

Conclusiveness of probate or letters of administration.

§Provided that probates and letters of administration granted by a High Court¶ after the first day of April 1875 shall, unless otherwise directed by the grant, have like effect throughout the whole of British India.

Effect of unlimited probates, &c., granted by High Court.

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* See Act XIV. of 1882, s. 3.
† S. 241A has been inserted by Act VI. of 1881, s. 3.
‡ The words quoted have been inserted by Act XII. of 1891.
§ This proviso has been added by Act XIII. of 1875, s. 2.
¶ For definition of "High Court," see Act II. of 1877.

242A.* Whenever a grant of probate or letters of administration is made by a High Court† with such effect as last aforesaid, the Registrar, or such other officer as the High Court making the grant appoints in this behalf, shall send to each of the other High Courts a certificate to the following effect :—

Transmission of certificate by High Court granting probate, &c., to other Courts.

I, *A. B.*, Registrar [*or as the case may be*] of the High Court of Judicature at [*or as the case may be*], hereby certify that, on the day of 18 , the High Court of Judicature at [*or as the case may be*], granted probate of the will [*or* letters of administration of the estate] of *C. D.*, late of , deceased, to *E. F.*, of , and *G. H.*, of , and that such probate [*or* letters] has [*or* have] effect over all the property of the deceased throughout the whole of British India ;

and such certificate shall be filed by the High Court receiving the same.

243. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration, and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

Conclusiveness of application for probate or administration, if properly made and verified.

244. Application for probate shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the will annexed, and stating—

Petition for probate.

the time of the testator's death,

that the writing annexed is his last will and testament,

that it was duly executed,

the amount of assets which are likely to come to the petitioner's hands, and

that the petitioner is the executor named in the will ;‡

and in addition to these particulars, when the application is to the District Judge, the petition shall further state that the deceased, at the time of his death, had his fixed place of abode, or had some property, moveable or immoveable, situate within the jurisdiction of the Judge ;

"and when the application is to a District Delegate, the petition shall further state that the deceased, at the time of his death, resided within the jurisdiction of such Delegate.§

245. In cases wherein the will is written in any language other than English, or than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for

In what cases translation of will to be annexed to petition.

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* S. 242A has been inserted by Act XIII. of 1875, s. 3.
† For definition of "High Court," see Act II. of 1877.
‡ As amended by Act VI. of 1889, s. 3.
§ This paragraph has been added by Act VI. of 1881, s. 4.

Act X. of 1865.

which a translator is appointed; or, if the will be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner:—

Verification of translation by person other than Court-translator.

"I (*A. B.*) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."

Petition for letters of administration.

246. Applications for letters of administration shall be made by petition distinctly written as aforesaid, and stating—

the time and place of the deceased's death,

the family or other relatives of the deceased, and their respective residences,

the right in which the petitioner claims,

that the deceased left some property within the jurisdiction of the District Judge "or District Delegate,"* to whom the application is made, and

the amount of assets which are likely to come to the petitioner's hands;

"and, when the application is to a District Delegate, the petition shall further state that the deceased at the time of his death, resided within the jurisdiction of such Delegate."†

Additional statements in petition for probate, &c.

246A.‡ Every person applying to a High Court§ for probate of a will or letters of administration of an estate, intended to have effect throughout British India, shall state in his petition, in addition to the matters respectively required by section 244 and section 246 of this Act, that to the best of his belief no application has been made to any other High Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid;

or, where any such application has been made, the High Court to which it was made, the person or persons by whom it was made, and the proceedings (if any) had thereon.

And the High Court, to which any application is made under the proviso to section 242 of this Act, may, if it think fit, reject the same.

Petition for probate or administration to be signed and verified.

247. The petition for probate or letters of administration shall, in all cases, be subscribed by the petitioner and his pleader (if any), and shall be verified by the petitioner in the following manner or to the like effect:—

"I (*A. B.*), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief."

Verification of petition for probate by one witness to will.

248. Where the application is for probate, the petition shall also be verified by at least one of the witnesses to the will (when procurable) in the manner or to the effect following:—

"I (*C. D.*), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present, and saw the

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* The words quoted have been inserted by Act VI. of 1881, s. 9.
† This paragraph has been added by Act VI. of 1881, s. 4.
‡ S. 246A has been inserted by Act XIII. of 1875, s. 4.
§ For definition of "High Court," see Act II. of 1877.

said testator affix his signature (*or* mark) thereto (*as the case may be*), (*or* that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence)." Act X of 1865.

249. If any petition or declaration which is hereby required to be verified shall contain any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

Punishment for false averment in petition or declaration.

250. In all cases it shall be lawful for the District Judge " or District Delegate," * if he shall think proper—

District Judge may examine petitioner in person,

to examine the petitioner in person, upon oath or solemn affirmation, and also

to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and

require further evidence,

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

and issue citations to inspect proceedings.

The citation shall be fixed up in some conspicuous part of the Court-house and also in the office of the Collector of the District and otherwise published or made known in such manner as the Judge " or District Delegate " * issuing the same may direct.

Publication of citation.

251.† Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate; and, immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge, and, immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased resided at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

Caveats against grant of probate or administration.

252. The caveat shall be to the following effect:—

Form of caveat.

" Let nothing be done in the matter of the estate of *A.B.*, late of , deceased, who died on the day of at , without notice to *C.D.*, of ."

253. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge " or officer " ‡ to whom the application has been made " or notice has been given of its entry with some other Delegate," ‡ until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

After entry of caveat, no proceeding taken on petition until after notice to caveator.

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* The words quoted have been inserted by Act VI. of 1881, s. 9.

† S. 251 has been substituted for the one originally enacted by Act VI. of 1881, s. 5.

‡ The words quoted have been inserted by Act VI. of 1881, s. 6.

Act X. of 1865.

253A.* A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

District Delegate when not to grant probate or administration.

Explanation.—By "contention" is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

253B.* In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

Power to transmit statement to District Judge in doubtful cases where no contention.

253C.* In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge.

Procedure where there is contention or District Delegate thinks probate or letters of administration should be refused in his Court.

254. When it shall appear to the Judge "or District Delegate"† that probate of a will should be granted, he will grant the same under the seal of his Court in manner following:—

Grant of probate to be under seal of Court.

"I, , Judge of the District of , [*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)],‡ hereby make known that on the day of , in the year , the last will of , late of , a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to , the executor in the said will named, he having undertaken to administer the same, and to make a full and true inventory of the said property and credits, and exhibit the same in this Court within six months from the date of this grant, or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said por-

Form of such grant.

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* Ss. 253A, 253B, and 253C have been inserted by Act VI. of 1881, s. 7.

† The words quoted have been inserted by Act VI. of 1881, s. 9.

‡ The words in brackets have been inserted by Act VI. of 1881, s. 8.

perty and credits within one year from the same date, or within such further time as the Court may from time to time appoint.* Act X. of 1865.

Grant of letters of administration to be under seal of Court.

255. And, wherever it shall appear to the District Judge " or District Delegate "† that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he will grant the same under the seal of his Court in manner following :—

Form of such grant.

"I, , Judge of the District of , [*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)],‡ hereby make known that on the day of , letters of administration (with *or* without the will annexed, *as the case may be*), of the property and credits of , late of , deceased, were granted to , the father (*or as the case may be*) of the deceased, he having undertaken to administer the same, and to make a full and true inventory of the said property and credits, and exhibit the same in this Court within six months from the date of this grant, or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date, or within such further time as the Court may from time to time appoint."*

Administration-bond.

256. " Every person to whom any grant of letters of administration is committed"§ shall give a bond to the Judge of the District Court to enure for the benefit of the Judge for the time being, with one more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge shall, from time to time, by any general or special order, direct.

Assignment of administration-bond.

257. The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security or providing that the money received be paid into Court, or otherwise as the Court may think fit, assign the same to some person, his executors or administrators who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

Time for grant of probate and administration.

258. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days from the day of the testator or intestate's death.

Filing of original wills of which probate or administration, with will annexed, granted.

259. Every District Judge " or District Delegate "† shall file and preserve all original wills of which probate or letters of administration, with the will annexed, may be granted by him among the records of his Court, until some public registry for wills is established: and the

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* The words " he having " to the end of the section have been substituted by Act VI. of 1889, s. 4.

† The words quoted have been inserted by Act VI. of 1881, s. 9.

‡ The words in brackets have been inserted by Act VI. of 1881, s. 8.

§ The words quoted have been substituted by Act VI. of 1889, s. 6.

Act X. of 1865.

local Government shall make regulations for the preservation and inspection of the wills so filed as aforesaid.

Grantee of probate or administration alone to sue, &c., until same revoked.

260. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

Procedure in contentious cases.

261. In any case before the District Judge in which there is contention,* the proceedings shall take, as nearly as may be, the form of a regular suit according to the provisions of the Code of Civil Procedure,† in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

Payment to executor or administrator before probate or administration revoked.

262. Where any probate is or letters of administration are revoked, all payments *bonâ fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same ;

Right of such executor or administrator to recoup himself.

and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself in respect of any payments made by him, which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

Appeals from orders of District Judge.

263. Every order made by a District Judge by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure† applicable to appeals.

Concurrent jurisdiction of High Court.

264. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

PART XXXII.‡

Of Executors of their own Wrong.

Executor of his own wrong.

265. A person who intermeddles with the estate of the deceased, or does any other act which belongs to the office of executor, while there is no rightful executor or administrator in existence, thereby makes himself an executor of his own wrong.

Exceptions. First.—Intermeddling with the goods of the deceased for the purpose of preserving them, or providing for his funeral or for the imme-

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* See 2 N.-W. P. 268.

† See Act XIV. of 1882, s. 3.

‡ This Part does not extend to Hindus, Jainas, Sikhs, or Buddhists.—Act XXI. of 1870.

diate necessities of his family or property, does not make an executor of his own wrong. Act X. of 1865.

Second.—Dealing in the ordinary course of business with goods of the deceased received from another does not make an executor of his own wrong.

Illustrations.

(*a.*) A uses or gives away or sells some of the goods of the deceased, or takes them to satisfy his own debt or legacy, or receives payment of the debts of the deceased. He is an executor of his own wrong.

(*b.*) A, having been appointed agent by the deceased in his lifetime to collect his debts and sell his goods, continues to do so after he has become aware of his death. He is an executor of his own wrong in respect of acts done after he has become aware of the death of the deceased.

(*c.*) A sues as executor of the deceased, not being such. He is an executor of his own wrong.

Liability of executor of his own wrong.

266. When a person has so acted as to become an executor of his own wrong, he is answerable to the rightful executor or administrator, or to any creditor or legatee of the deceased, to the extent of the assets which may have come to his hands, after deducting payments made to the rightful executor or administrator, and payments made in a due course of administration.

PART XXXIII.*

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

In respect of causes of action surviving deceased, and rents due at death.

267. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and to distrain for all rents due to him at the time of his death, as the deceased had when living.

Demands and rights of action of or against deceased survive to and against executor or administrator.

268. All demands whatsoever, and all rights to prosecute or defend any action or special proceeding, existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

Illustrations.

(*a.*) A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having brought any action. The cause of action does not survive.

(*b.*) A sues for divorce. A dies. The cause of action does not survive to his representative.

Power of executor or administrator to dispose of property.

269. An executor or administrator has power to dispose of the property of the deceased, either wholly or in part, in such manner as he may think fit.

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* This Part does not extend to Hindus, Jainas, Sikhs, or Buddhists.—Act XXI. of 1870. Compare Act V. of 1881, Ch. VI.

Act X. of 1865.

Illustrations.

(*a.*) The deceased has made a specific bequest of part of his property. The executor not having assented to the bequest, sells the subject of it. The sale is valid.

(*b.*) The executor, in the exercise of his discretion, mortgages a part of the immoveable estate of the deceased. The mortgage is valid.

Purchase by executor or administrator of deceased's property.

270. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

Powers of several executors or administrators, exercisable by one.

271. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary, be exercised by any one of them who has proved the will or taken out administration.

Illustrations.

(*a*). One of several executors has power to release a debt due to the deceased

(*b.*) One has power to surrender a lease.

(*c.*) One has power to sell the property of the deceased, moveable or immoveable.

(*d.*) One has power to assent to a legacy.

(*e.*) One has power to endorse a promissory note payable to the deceased.

(*f.*) The will appoints A, B, C, and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

Survival of powers on death of one of several executors or administrators.

272. Upon the death of one or more of several executors or administrators, all the powers of the office become vested in the survivors or survivor.

Powers of administrator of effects unadministered.

273. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

Powers of administrator during minority.

274. An administrator during minority has all the powers of an ordinary administrator.

Powers of married executrix or administratrix.

275. When probate or letters of administration have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

PART XXXIV.*

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

As to deceased's funeral.

276. It is the duty of an executor to perform the funeral of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

Inventory and account.

277.† (1) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the pro-

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* This Part does not extend to Hindus, Jainas, Sikhs, or Buddhists.—Act XXI. of 1870. Compare Act V. of 1881, Ch. VII.

† S. 277 has been substituted by Act VI. of 1889, s. 7.

bate or letters may from time to time appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the grant, or within such further time as the said Court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his hands, and the manner in which they have been applied or disposed of. Act X. of 1865.

(2) The High Court may from time to time prescribe the form in which an inventory or account under this section is to be exhibited.

(3) if an executor or administrator, on being required by the Court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he shall be deemed to have committed an offence under section 176 of the Indian Penal Code.

(4) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under section 193 of that Code.

277A.* In all cases where "a grant has been made"† of probate or letters of administration intended to have effect throughout the whole of British India, the executor or administrator‡ to the effects of any person dying in British India and leaving property in more than one province, shall include in the inventory of the effects of the deceased his moveable or immoveable property situate in each of the provinces.

Inventory to include property in any part of British India.

And the value of such property situate in the said provinces, respectively, shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby, wheresoever situate within British India.

278. The executor or administrator shall collect, with reasonable diligence, the property of the deceased, and the debts that were due to him at the time of his death.

As to property of, and debts owing to, deceased.

279. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and deathbed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

Expenses to be paid before all debts.

280. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and deathbed charges.

Expenses to be paid next after such expenses.

281. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artisan, or domestic servant, are next to be paid, and then the other debts of the deceased.

Wages for certain services to be next paid, and then other debts.

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* S. 277A has been inserted by Act XIII. of 1875, s. 5.

† The words quoted have been substituted for "it is sought to obtain a grant" by Act VI. of 1889, s. 8.

‡ The word "administrator" has been substituted for "the person applying for administration after the first day of April 1875," by Act VI. of 1889, s. 8.

Act X. of 1865.

Save as aforesaid, all debts to be paid equally and rateably.

282. Save as aforesaid, no creditor is to have a right of priority over another, by reason that his debt is secured by an instrument under seal, or on any other account.

But the executor or administrator shall pay all such debts* as he knows† of, including his own, equally and rateably,‡ as far as the assets of the deceased will extend.

Application of moveable property to payment of debts where domicile not in British India.

283. If the domicile of the deceased was not in British India, the application of his moveable property to the payment of his debts is to be regulated by the law of "British India." §

Creditor paid in part under section 283 to bring payment into account before sharing in proceeds of immoveable property.

284. No creditor who has received payment of a part of his debt by virtue of the last preceding section shall be entitled to share in the proceeds of the immoveable estate of the deceased unless he brings such payment into account for the benefit of the other creditors.

Illustration.

A dies, having his domicile in a country where instruments under seal have priority over instruments not under seal, leaving moveable property to the value of 5,000 rupees and immoveable property to the value of 10,000 rupees, debts on instruments under seal to the amount of 10,000 rupees, and debts on instruments not under seal to the same amount. The creditors holding instruments under seal receive half of their debts out of the proceeds of the moveable estate. The proceeds of the immoveable estate are to be applied in payment of the debts on instruments not under seal until one-half of such debts has been discharged. This will leave 5,000 rupees, which are to be distributed rateably amongst all the creditors without distinction in proportion to the amount which may remain due to them.

Debts to be paid before legacies.

285. Debts of every description must be paid before any legacy.

Executor or administrator not bound to pay legacies without indemnity.

286. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Abatement of general legacies.

287. If the assets after payment of debts, necessary expenses, and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions;

Executor not to pay one legatee in preference to another.

and the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Non-abatement of specific legacy when assets sufficient to pay debts.

288. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

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* A liability to pay calls is a debt.—8 Bom., O. C. J., 20.

† *I. e.*, actually, not constructively.—8 Bom., O. C. J., 20.

‡ 8 Bom., O. C. J., 20.

§ The words quoted have been substituted for the words "the country in which he was domiciled" by Act VI. of 1889, s. 9, cl. 1; and the illustration originally attached to this section has been repealed by cl. 2 of the same section.

289. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and, if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Right under demonstrative legacy when assests sufficient to pay debts and necessary expenses.

290. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Rateable abatement of specific legacies.

Illustration.

A has bequeathed to B a diamond-ring valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B, and rupees 666-10-8 to C.

291. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

Legacies treated as general for purpose of abatement.

PART XXXV.*

OF THE EXECUTOR'S ASSENT TO A LEGACY.

292. The assent of the executor is necessary to complete a legatee's title to his legacy.

Assent necessary to complete legatee's title.

Illustrations.

(*a*.) A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(*b*) A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

293. The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Effect of executor's assent to specific legacy.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Nature of assent.

Illustrations.

(*a*.) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

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* This Part does not extend to Hindus, Jainas, Sikhs, or Buddhists.—Act XXI. of 1870. Compare Act V. of 1881, Ch. VIII.

Act X of 1865.

(*b.*) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(*c.*) A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(*d.*) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(*e.*) A person to whom a specific article has been bequeathed takes possession of it, and retains it without any objection on the part of the executor. His assent may be presumed.

Conditional assent.

294 The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Illustrations.

(*a.*) A bequeaths to B his lands of Sultánpur, which at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest, on condition that B shall, within a limited time, pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(*b.*) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

Assent of executor to his own legacy.

295. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person, and his assent may in like manner be express or implied.

Implied assent.

Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee, and is not referable to his character of executor.

Illustration.

An executor takes the rent of a house, or the interest of Government securities bequeathed to him, and applies it to his own use. This is assent.

Effect of executor's assent.

296. The assent of the executor to a legacy gives effect to it from the death of the testator.

Illustrations.

(*a.*) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(*b.*) A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

Executor when to deliver legacies.

297. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

PART XXXVI.*

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

Commencement of annuity when no time fixed by will.

298. Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

When annuity, to be paid quarterly or monthly, first falls due.

299. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death; and shall, if the executor think fit, be paid when due, but the executor shall not be bound to pay it till the end of the year.

Dates of successive payments when first payment directed to be made within given time, or on day certain.

300. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made;

Apportionment where annuitant dies between times of payment.

and if the annuitant should die in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

PART XXXVII.*

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

Investment of sum bequeathed where legacy, not specific, given for life.

301. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall, at the end of the year, be invested in such securities as the High Court may, by any general rule to be made, from time to time authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Investment of general legacy, to be paid at future time.

302. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

Intermediate interest.

The intermediate interest shall form part of the residue of the testator's estate.

Procedure when no fund charged with, or appropriated to, annuity.

303. Where an annuity is given, and no fund is charged with its payment, or appropriated by the will to answer it, a Government annuity of the specified amount shall be purchased; or,

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* This Part does not extend to Hindus, Jainas, Sikhs, or Buddhists.—Act XXI. of 1870. Compare Act V. of 1881, Ch. IX.

Act X. of 1865.

if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made, from time to time authorize or direct.

Transfer to residuary legatee of contingent bequest.

304. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee on his giving sufficient security for the payment of the legacy if it shall become due.

Investment of residue bequeathed for life, without direction to invest in particular securities.

305. Where the testator has bequeathed the residue of his estate to a person for life without any direction to invest it in any particular securities, so much thereof as is not at the time of the testator's decease invested in such securities as the High Court may for the time being regard as good securities shall be converted into money, and invested in such securities.

Investment of residue bequeathed for life, with direction to invest in specified securities.

306. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

Time and manner of conversion and investment.

307. Such conversion and investment as are contemplated by the two last preceding sections shall be made at such times and in such manner as the executor shall in his discretion think fit;

and until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of four per cent. per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

Interest payable until investment.

Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.

308. Where, by the terms of a bequest, the lagatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no discretion in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge by whom "or by whose District Delegate"* the probate was, or letters of administration with the will annexed were, granted, to the account of the legatee unless the legatee be a ward of the Court of Wards;

and, if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account, and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid;

and such money, when paid in, shall be invested in the purchase of Government securities which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit as the Judge or the Court of Wards, as the case may be, may direct.

* The words quoted have been inserted by Act VI. of 1881, s. 8.

PART XXXVIII.*

Act X. of 1865.

OF THE PRODUCE AND INTEREST OF LEGACIES.

Legatee's title to produce of specific legacy.

309. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy.

The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(*a.*) A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(*b.*) A bequeaths his Government securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(*c.*) The testator bequeaths all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

Residuary legatee's title to produce of residuary fund.

310. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Exception.—A general residuary bequest, contingent in its terms, does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy. Such income goes as undisposed of.

Illustrations.

(*a.*) The testator bequeaths the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(*b.*) The testator bequeaths the residue of his property to A, when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

Interest when no time fixed for payment of general legacy.

311. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Exceptions.—(1.) Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2.) Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3.) Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

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* This Part does not extend to Hindus, Jainas, Sikhs, and Buddhists.—Act XXI. of 1870. Compare Act V. of 1881, Ch. XI.

Act X. of 1865.

Interest when time fixed.

312. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed.

The interest up to such time forms part of the residue of the testator's estate.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance.

Rate of interest.

313. The rate of interest shall be four per cent. per annum.

No interest on arrears of annuity within first year after testator's death.

314. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

Interest on sum to be invested to produce annuity.

315. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

PART XXXIX.*

Of the Refunding of Legacies.

Refund of legacy paid under Judge's orders.

316. When an executor has paid a legacy under the order of a Judge, he is entitled to call upon the legatee to refund, in the event of the assets proving insufficient to pay all the legacies.

No refund if paid voluntarily.

317. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund, in the event on the assets proving insufficient to pay all the legacies.

Refund when legacy becomes due on performance of condition within further time allowed under section 124.

318. When the time prescribed by the will for the performance of a condition has elapsed without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets; in such case, if further time has been allowed under section 124 for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

When each legatee compellable to refund in proportion.

319. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

Distribution of assets.

320. Where an executor or administrator has given such notices as would have been given by the High Court in an administration-suit for creditors and others to send in

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* This Part does not extend to Hindus, Jainas, Sikhs, or Buddhists.—Act XXI. of 1870. Compare Act V. of 1881, Ch. XII.

to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets,* or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he shall not have had notice at the time of such distribution; Act X. of 1865.

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

Creditor may follow assets.

321. A creditor who has not received payment of his debt may† call upon a legatee who has received payment of his legacy to refund,* whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies, and whether the payment of the legacy by the executor was voluntary or not.

Within what period creditor may call upon legatee to refund.

322. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund under the last preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

When legatee not satisfied, or compelled to refund under section 321, cannot oblige one paid in full to refund.

323. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent; but, if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

When unsatisfied legatee must first proceed against executor, if solvent.

324. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Limit of refunding of one legatee to another.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and, if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

325. The refunding shall, in all cases, be without interest.

Refunding to be without interest.

326. The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

Residue after usual payments to be paid to residuary legatee.

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* For limitation of suits to compel a refund, see Act XV. of 1877, Sch. II., No. 43.

† See Act XV. of 1877.

Act X. of 1865.

Transfer of assets from British India to executor or administrator in country of domicile for distribution.

326A. Where a person not having his domicile in British India has died, leaving assets both in British India and in the country in which he had his domicile at the time of his death, and there have been a grant of probate or letters of administration in British India with respect to the assets there and a grant of administration in the country of domicile with respect to the assets in that country, the executor or administrator, as the case may be, in British India, after having given such notices as are mentioned in section 320, and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of, may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.*

PART XL.†

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

Liability of executor or administrator for devastation.

327. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Illustrations.

(*a.*) The executor pays out of the estate an unfounded claim. He is liable to make good the loss.

(*b.*) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss.

(*c.*) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

For neglect to get in any part of property.

328. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

Illustrations.

(*a.*) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount.

(*b.*) The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount.

PART XLI.‡

MISCELLANEOUS.

329. [*Repealed by Act VII. of 1870.*]

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* S. 326A has been inserted by Act II. of 1890.

† This Part does not extend to Hindus, Jainas, Sikhs, or Buddhists.—Act XXI. of 1870. Compare Act V. of 1881, Ch. XIII.

‡ This Part does not extend to Hindus, Jainas, Sikhs, or Buddhists.—Act XXI. of 1870.

330. [*Repealed by Act XXIV. of 1867.*]

Act X. of 1865.

331. The provisions of this Act shall not apply to intestate or testamentary succession to the property of any Hindu,* Muhammadan, or Buddhist;* nor shall they apply to any will made, or any intestacy occurring, before the first day of January 1866.

Succession to property of Hindus, &c., and certain wills, intestacies, and marriages not affected.

Section 4 shall not apply to any marriage contracted before the same day.

332. The Governor-General of India in Council shall, from time to time, have power, by an order, either retrospectively from the passing of this Act, or prospectively, to exempt, from the operation of the whole or any part of this Act, the members of any race, sect, or tribe in British India, or any part of such race, sect,† or tribe, to whom he may consider it impossible or inexpedient to apply the provisions of this Act or of the part of the Act mentioned in the order.

Power of Governor-General to exempt any race, sect, or tribe in British India from operation of Act.

The Governor-General of India in Council shall also have power, from time to time, to revoke such order, but not so that the revocation shall have any retrospective effect.

All orders and revocations made under this section shall be published in the *Gazette of India*.

333.‡ (*1*) When a grant of probate or letters of administration is revoked or annulled under this Act, the person to whom the grant was made shall forthwith deliver up the probate or letters to the Court which made the grant.

Surrender of revoked probate or letters of administration.

(*2*) If such person wilfully and without reasonable cause omits so to deliver up the probate or letters, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment of either description for a term which may extend to three months, or with both.

SCHEDULE.

(Stamps and Fees.)

[*Repealed by Act VII. of 1870.*]

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* Now see Act XXI. of 1870. See, too, 2 B. L. R., O. C. J., 79.

† Under this section, Native Christians in the Province of Coorg have been exempted from the provisions of the Succession Act retrospectively from the 16th March 1865. — *Gazette of India*, July 25, 1868, p. 1094.

‡ S. 333 has been added by Act VI. of 1889, s. 10.

Act XV. of 1865.

ACT XV. OF 1865*.

RECEIVED THE G.-G.'S ASSENT ON THE 7TH APRIL 1865.

An Act to define and amend the Law relating to Marriage and Divorce among the Pársis.

Preamble.

WHEREAS the Pársi community has represented the necessity of defining and amending the law relating to marriage and divorce among Pársis; And whereas it is expedient that such law should be made conformable to the customs of the said community; It is enacted as follows:—

I.—Preliminary.

Short title.

1. This Act may be cited as "The Pársi Marriage and Divorce Act, 1865."

Interpretation-clause.

2. In this Act, unless there be something repugnant in the subject or context,—

Words in the singular number include the plural, and words in the plural number include the singular:

"Priest" means a Pársi priest, and includes Dastúr and Mobed:

"Marriage" means a marriage between Pársis, whether contracted before or after the commencement of this Act; and "husband" and "wife" respectively mean a Pársi husband and a Pársi wife:

"Section" means a section of this Act:

"Chief Justice" includes Senior Judge:

"Court" means a Court constituted under this Act:

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* Act XV. of 1865 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh	See *Gazette of India*	. Dec. 4, 1880, Pt. I., p. 672.
West Jalpáiguri	Ditto	. Mar. 5, 1881, Pt. I., p. 74.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	. Oct. 22, 1881, Pt. I., p. 504.
The Jhánsi Division . . .	Ditto	. Oct. 31, 1878, Pt. I., p. 546.
The scheduled portion of the Mirzápur District . . .	Ditto	. May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	. May 31, 1879, Pt. I., p. 382.
The Districts of Hazára, Pesháwar, Kohát, Bánnu, Dera Ismail Khán, and Dera Gházi Khán	Ditto	. Jan. 30, 1886, Pt. I., p. 48.
The District of Silhat . . .	Ditto	. Oct. 4, 1879, Pt. I., p. 631.

It has been extended, under the same Act, to the following Scheduled Districts:—

Kumáon and Garhwál . . .	See *Gazette of India*	. Dec. 4, 1876, Pt. I., p. 606.
The North-Western Provinces Tarái	Ditto	. Sep. 23, 1876, Pt. I., p. 505.

It has been declared, under the same Act, not to be in force in the Scheduled District of Lahaul.—See *Gazette of India*, May 1, 1886, Pt. I., p. 301.

"British India" means the territories which are or shall be vested in Her Majesty or Her successors by the Statute 21 & 22 Vic., cap. 106, entitled "An Act for the better government of India;" Act XV, of 1865.

And, in any part of British India in which this Act operates, "Local Government" means the person authorized to administer executive government in such part of India, or the chief executive officer of such part when it is under the immediate administration of the Governor-General of India in Council, and when such officer shall be authorized to exercise the powers vested by this Act in a Local Government; and

"High Court" means the highest Civil Court of appeal in such part.

II.—Of Marriages between Pársis.

Requisites to validity of Pársi marriages.

3. No marriage contracted after the commencement of this Act shall be valid, if the contracting parties are related to each other in any of the degrees of consanguinity or affinity prohibited among Pársis, and set forth in a table which the Governor-General of India in Council shall, after due enquiry, publish in the *Gazette of India*,* and unless such marriage shall be solemnized according to the Pársi form or ceremony called "Asirvád" by a Pársi priest in the presence of two Pársi witnesses independently of such officiating priest; and unless, in the case of any Pársi who shall not have completed the age of twenty-one years, the consent of his or her father or guardian shall have been previously given to such marriage.

Re-marriage save after divorce unlawful during lifetime of first wife or husband.

4. No Pársi shall, after the commencement of this Act, contract any marriage in the lifetime of his or her wife or husband, except after his or her lawful divorce from such wife or husband by sentence of a Court as hereinafter provided:

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* The following Table was published in the *Gazette of India*, Sep. 9, 1865, pp. 981, 982:—

TABLE.

A man shall not marry his—

1. Paternal grandfather's mother.
2. Paternal grandmother's mother.
3. Maternal grandfather's mother.
4. Maternal grandmother's mother.
5. Paternal grandmother.
6. Paternal grandfather's wife.
7. Maternal grandmother.
8. Maternal grandfather's wife.
9. Mother or step-mother.
10. Father's sister or step-sister.
11. Mother's sister or step-sister.
12. Sister or step-sister.
13. Brother's daughter or step-brother's daughter, or any direct lineal descendant of a brother or step-brother.
14. Sister's daughter or step-sister's daughter, or any direct lineal descendant of a sister or step-sister.
15. Daughter or step-daughter or any direct lineal descendant of either.
16. Son's daughter or step-son's daughter, or any direct lineal descendant of a son or step-son.
17. Wife of son or of step-son, or of any direct lineal descendant of a son or step-son.
18. Wife of daughter's son or of step-daughter's son, or of any direct lineal descendant of a daughter or step-daughter.
19. Mother of daughter's husband.
20. Mother of son's wife.
21. Mother of wife's paternal grandfather.
22. Mother of wife's paternal grandmother.
23. Mother of wife's maternal grandfather.
24. Mother of wife's maternal grandmother.
25. Wife's paternal grandmother.
26. Wife's maternal grandmother.
27. Wife's mother or step-mother.
28. Wife's father's sister.
29. Wife's mother's sister.
30. Father's brother's wife.
31. Mother's brother's wife.
32. Brother's son's wife.
33. Sister's son's wife.

Act XV. of 1865.

and every marriage contracted contrary to the provisions of this section shall be void.

Punishment of bigamy.

5. Every Pársi who shall, after the commencement of this Act, and during the lifetime of his or her wife or husband, contract any marriage without having been lawfully divorced from such wife or husband shall be subject to the penalties provided in sections 494 and 495 of the Indian Penal Code for the offence of marrying again during the lifetime of a husband or wife.

Certificate and registry of marriages.

6. Every marriage contracted after the commencement of this Act shall, immediately on the solemnization thereof, be certified by the officiating priest in the form contained in the schedule to this Act.

The certificate shall be signed by the said priest, the contracting parties, or their fathers or guardians when they shall not have completed the age of twenty-one years, and two witnesses present at the marriage; and the said priest shall thereupon send such certificate, together with a fee of two rupees to be paid by the husband, to the registrar of the place at which such marriage is solemnized.

The registrar, on receipt of the certificate and fee, shall enter the certificate in a register to be kept by him for that purpose, and shall be entitled to retain the fee.

Appointment of registrar.

7. For the purposes of this Act a registrar shall be appointed.*

TABLE.

A woman shall not marry her—

1. Paternal grandfather's father.
2. Paternal grandmother's father.
3. Maternal grandfather's father.
4. Maternal grandmother's father.
5. Paternal grandfather.
6. Paternal grandmother's husband.
7. Maternal grandfather.
8. Maternal grandmother's husband.
9. Father or step-father.
10. Father's brother or step-brother.
11. Mother's brother or step-brother.
12. Brother or step-brother.
13. Brother's son or step-brother's son, or any direct lineal descendant of a brother or step-brother.
14. Sister's son or step-sister's son, or any direct lineal descendant of a sister or step-sister.
15. Son or step-son, or any direct lineal descendant of either.
16. Daughter's son or step-daughter's son, or any direct lineal descendant of a daughter or step-daughter.
17. Husband of daughter or of step-daughter, or of any direct lineal descendant of a daughter or step-daughter.
18. Husband of son's daughter or of step-son's daughter, or of any direct lineal descendant of a son or step-son.
19. Father of daughter's husband.
20. Father of son's wife.
21. Father of husband's paternal grandfather.
22. Father of husband's paternal grandmother.
23. Father of husband's maternal grandfather.
24. Father of husband's maternal grandmother.
25. Husband's paternal grandfather.
26. Husband's maternal grandfather.
27. Husband's father or stepfather.
28. Brother of husband's father.
29. Brother of husband's mother.
30. Husband's brother's son or his direct lineal descendant.
31. Husband's sister's son or his direct lineal descendant.
32. Brother's daughter's husband.
33. Sister's daughter's husband.

Note.—In the above table the words "Brother" and "Sister" denote brother and sister of the whole as well as half blood. Relationship by step means relationship by marriage.

* Certain words, which were repealed by Act XIV. of 1870, have here been omitted.

Within the local limits of the ordinary original civil jurisdiction of a High Court, the registrar shall be appointed by the Chief Justice of such Court, and, without such limits, by the Local Government. Act XV. of 1865.

Every registrar so appointed may be removed by the Chief Justice or Local Government appointing him.

Marriage-register to be open for public inspection.

8. The register of marriages mentioned in section 6 shall, at all reasonable times, be open for inspection; and certified extracts therefrom shall, on application, be given by the registrar on payment to him by the applicant of two rupees for each such extract.

Every such register shall be evidence of the truth of the statements therein contained.

Transmission of certified copies of certificates in marriage-register to Registrar-General of Births, Deaths, and Marriages.

8A.* Every Registrar, except the Registrar appointed by the Chief Justice of the High Court of Judicature at Bombay, shall, at such intervals as the Governor-General in Council from time to time directs, send, to the Registrar-General of Births, Deaths, and Marriages for the territories administered by the Local Government by which he was appointed, a true copy, certified by him in such form as the Governor-General from time to time prescribes, of all certificates entered by him in the said register of marriages since the last of such intervals.

Penalty for solemnizing marriage contrary to section 4.

9. Any priest knowingly and wilfully solemnizing any marriage contrary to, and in violation of, section 4 shall, on conviction thereof, be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

Penalty for priest's neglect of requirements of section 6.

10. Any priest neglecting to comply with any of the requisitions affecting him contained in section 6 shall, on conviction thereof, be punished for every such offence with simple imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.

Penalty for omitting to subscribe and attest certificate.

11. Every other person required by section 6 to subscribe or attest the said certificate, who shall wilfully omit or neglect so to do, shall, on conviction thereof, be punished for every such offence with a fine not exceeding one hundred rupees.

Penalty for making, &c., false certificate.

12 Every person making or signing or attesting any such certificate containing a statement which is false, and which he either knows or believes to be false, or does not know to be true, shall be deemed to be guilty of the offence of forgery as defined in the Indian Penal Code, and shall be liable, on conviction thereof, to the penalties provided in section 466 of the said Code.

Penalty for not registering certificate.

13. Any Registrar failing to enter the said certificate pursuant to section 6 shall be punished with simple imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

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* S. 8A has been inserted by Act VI. of 1886, s. 31.

Act XV. of 1865.

Penalty for secreting, destroying, or altering register.

14. Any person secreting, destroying, or dishonestly or fraudulently altering, the said register in any part thereof, shall be punished with imprisonment of either description as defined in the Indian Penal Code for a term which may extend to two years, or, if he be a registrar, for a term which may extend to five years, and shall also be liable to fine which may extend to five hundred rupees.

III.—Of Párs Matrimonial Courts.

Constitution of special Courts under Act.

15. For the purposes of hearing suits under this Act, a special Court shall be constituted in each of the presidency-towns of Calcutta, Madras, and Bombay, and in such other places in the territories of the several Local Governments as such Governments respectively shall think fit.

Párs Chief Matrimonial Courts.

16. The Court so constituted in each of the presidency-town shall be entitled the Párs Chief Matrimonial Court of Calcutta, Madras, or Bombay, as the case may be.

The local limits of the jurisdiction of a Párs Chief Matrimonial Court shall be conterminous with the local limits of the ordinary original civil jurisdiction of the High Court.

The Chief Justice of the High Court or such other Judge of the same Court as the Chief Justice shall from time to time appoint shall be the Judge of such Matrimonial Court, and, in the trial of cases under this Act, he shall be aided by eleven delegates.

Párs District Matrimonial Courts.

17. Every Court so constituted at a place other than a presidency-town shall be entitled the Párs District Matrimonial Court of such place.

Subject to the provisions contained in the next following section, the local limits of the jurisdiction of such Court shall be contermin ous with the limits of the district in which it is held.

The Judge of the principal Court of original civil jurisdiction at such place shall be the Judge of such Matrimonial Court, and, in the trial of cases under this Act, he shall be aided by seven delegates.

Power to alter territorial jurisdiction of District Courts.

18. The Local Government may from time to time alter the local limits of the jurisdiction of any Párs District Matrimonial Court, and may include within such limits any number of districts under its government.

Certain districts within jurisdiction of Chief Matrimonial Court.

19. Any district, which the Local Government, on account of the fewness of the Párs inhabitants, shall deem it inexpedient to include within the jurisdiction of any District Matrimonial Court, shall be included within the jurisdiction of the Párs Chief Matrimonial Court for the territories under such Local Government where there is such Court.

Court-seal.

20. A seal shall be made for every Court constituted under this Act, and all decrees and orders and copies of decrees and orders of such Court shall be sealed with such seal, which shall be kept in the custody of the presiding Judge.

Appointment of delegates.

21. The Local Governments shall, in the presidency-towns and districts subject to their respective governments, respectively appoint persons to be delegates to aid in the adjudication of cases arising under this Act.

The persons so appointed shall be Pársis: their names shall be published in the official Gazette; and their number shall, within the local limits of the ordinary original civil jurisdiction of a High Court, be not more than thirty, and in districts beyond such limits not more than twenty. Act XV of 1865.

Power to appoint new delegates.

22. The appointment of a delegate shall be for life.

But whenever a delegate shall die, or be desirous of relinquishing his office, or refuse or become incapable or unfit to act, or be convicted of an offence under the Indian Penal Code or other law for the time being in force, then and so often the Local Government may appoint any other person being a Pársi to be a delegate in his stead; and the name of the person so appointed shall be published in the official Gazette.

Delegates deemed public servants.

23. All delegates appointed under this Act shall be considered to be public servants within the meaning of the Indian Penal Code.

Selection of delegates under sections 16 and 17 from those appointed under section 21.

24. The delegates selected under sections 16 and 17 to aid in the adjudication of suits under this Act shall be taken under the orders of the presiding Judge of the Court in due rotation from the delegates appointed by the Local Government under section 21.

Practitioners in Matrimonial Courts.

25. All advocates, vakils, and attorneys-at-law entitled to practise in a High Court shall be entitled to practise in any of the Courts constituted under this Act; and all vakils entitled to practise in a District Court shall be entitled to practise in any District Matrimonial Court constituted under this Act.

Court in which suits to be brought.

26. All suits instituted under this Act shall be brought in the Court within the limits of whose jurisdiction the defendant resides at the time of the institution of the suit.

When defendant has left British India.

When the defendant shall at such time have left British India, such suit shall be brought in the Court at the place where the plaintiff and defendant last resided together.

IV.—Of Matrimonial Suits.

(a.) For a Decree of Nullity.

In case of lunacy or mental unsoundness.

27. If a Pársi at the time of his or her marriage was a lunatic or of habitually unsound mind, such marriage may, at the instance of his or her wife or husband, be declared null and void upon proof that the lunacy or habitual unsoundness of mind existed at the time of the marriage, and still continues:

Provided that no suit shall be brought under this section if the plaintiff shall at the time of the marriage have known that the respondent was a lunatic or of habitually unsound mind.

In case of impotency.

28. In any case in which consummation of the marriage is from natural causes impossible, such marriage may, at the instance of either party thereto, be declared to be null and void.

Act XV. of 1865.

(b.) For a Decree of Dissolution in Case of Absence.

29. If a husband or wife shall have been continually absent from his or her wife or husband for the space of seven years, and shall not have been heard of as being alive within that time by those persons who would naturally have heard of him or her had he or she been alive, the marriage of such husband or wife may, at the instance of either party thereto, be dissolved.

In case of absence for seven years.

(c.) For Divorce or Judicial Separation.

30. Any husband may sue that his marriage may be dissolved, and a divorce granted, on the ground that his wife has, since the celebration thereof, been guilty of adultery;

On ground of wife's adultery.

and any wife may sue that her marriage may be dissolved, and a divorce granted, on the ground that, since the celebration thereof, her husband has been guilty of adultery with a married, or fornication with an unmarried, woman not being a prostitute, or of bigamy coupled with adultery, or of adultery coupled with cruelty, or of adultery coupled with wilful desertion for two years or upwards, or of rape, or of an unnatural offence :

On ground of husband's adultery, &c.

In every such suit for divorce on the ground of adultery the plaintiff shall, unless the Court shall otherwise order, make the person with whom the adultery is alleged to have been committed a co-defendant, and in any such suit by the husband the Court may order the adulterer to pay the whole or any part of the costs of the proceedings.

31. If a husband treat his wife with such cruelty or personal violence as to render it in the judgment of the Court improper to compel her to live with him, or if his conduct afford her reasonable grounds for apprehending danger to life or serious personal injury, or if a prostitute be openly brought into, or allowed to remain, in the place of abode of a wife by her own husband, she shall be entitled to demand a judicial separation.

Grounds of judicial separation.

32. In a suit for divorce or judicial separation under this Act, if the Court be satisfied of the truth of the allegations contained in the plaint, and

Suits for divorce or judicial separation.

that the offence therein set forth has not been condoned, and

that the husband and wife are not colluding together, and

that the plaintiff has not connived at, or been accessory to, the said offence, and

that there has been no unnecessary or improper delay in instituting the suit, and

that there is no other legal ground why relief should not be granted,

then, and in such case, but not otherwise, the Court shall decree a divorce or judicial separation accordingly.

33. In any suit under this Act for divorce or judicial separation, if the wife shall not have an independent income sufficient for her support and the necessary expenses of the

Alimony *pendente lite*.

suit, the Court, on the application of the wife, may order the husband to pay her, monthly or weekly during the suit, such sum, not exceeding one-fifth of the husband's net income, as the Court, considering the circumstances of the parties, shall think reasonable. Act XV. of 1865.

Permanent alimony.

34. The Court may, if it shall think fit, on any decree for divorce or judicial separation, order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum, or such monthly or periodical payments of money for a term not exceeding her life, as, having regard to her own property (if any), her husband's ability, and the conduct of the parties, shall be deemed just, and for that purpose may require a proper instrument to be executed by all necessary parties, and suspend the pronouncing of its decree until such instrument shall have been duly executed.

In case any such order shall not be obeyed by her husband, he shall be liable to damages at her suit, and further to be sued by any person supplying her with necessaries during the time of such disobedience, for the price or value of such necessaries.

Payment of alimony to wife or her trustee.

35. In all cases in which the Court shall make any decree or order for alimony, it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the Court, and may impose any terms or restrictions which to the Court may seem expedient, and may from time to time appoint a new trustee, if for any reason it shall appear to the Court expedient so to do.

(d.) For Restitution of Conjugal Rights.

Suit for restitution of conjugal rights.

36. Where a husband shall have deserted, or without lawful cause ceased to cohabit with, his wife, or where a wife shall have deserted, or without lawful cause ceased to cohabit with, her husband, the party so deserted, or with whom cohabitation shall have so ceased, may sue for the restitution of his or her conjugal rights, and the Court, if satisfied of the truth of the allegations contained in the plaint, and that there is no just ground why relief should not be granted, may proceed to decree such restitution of conjugal rights accordingly.

If such decree shall not be obeyed by the party against whom it is passed, he or she shall be liable to be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.*

No suit to enforce marriage or contract arising out of marriage when husband under 16, or wife under 14, years.

37. Notwithstanding anything hereinbefore contained, no suit shall be brought in any Court to enforce any marriage between Pársis, or any contract connected with, or arising out of, any such marriage, if, at the date of the institution of the suit, the husband shall not have completed the age of sixteen years, or the wife shall not have completed the age of fourteen years.

Suits with closed doors.

38. In every suit preferred under this Act the case shall be tried with closed doors should such be the wish of either of the parties.

39. [*Repealed by Act VII. of 1870.*]

* See 9 Bom. 290.

Act XV. of 1865.

Civil Procedure Code applied.

40. The provisions of the Code of Civil Procedure* shall, so far as the same may be applicable, apply to suits instituted under this Act.†

Determination of questions of law, procedure, and fact.

41. In suits under this Act all questions of law and procedure shall be determined by the presiding Judge ; but the decision on the facts shall be the decision of the majority of the delegates before whom the case is tried.

Appeal to High Court.

42. An appeal shall lie to the High Court from the decision of any Court established under this Act, whether a Chief Matrimonial Court or a District Matrimonial Court, on the ground of the decision being contrary to some law or usage having the force of law, or of a substantial error or defect in the procedure or investigation of the case which may have produced error or defect in the decision of the case upon the merits, and on no other ground :

Provided that such appeal be instituted within three calendar months after the decision appealed from shall have been pronounced.

Liberty to parties to marry again.

43. When the time hereby limited for appealing against any decree dissolving a marriage shall have expired, and no appeal shall have been presented against such decree, or

when any such appeal shall have been dismissed, or

when in the result of any appeal any marriage shall be declared to be dissolved, but not sooner,

it shall be lawful for the respective parties thereto to marry again, as if the prior marriage had been dissolved by death.

V.—Of the Children of the Parties.

Custody of children *pendente lite.*

44. In any suit under this Act for obtaining a judicial separation or a decree of nullity of marriage, or for dissolving a marriage, the Court may from time to time pass such interim orders, and make such provision in the final decree, as it may deem just and proper, with respect to the custody, maintenance, and education of the children under the age of sixteen years, the marriage of whose parents is the subject of such suit,

and may, after the final decree, upon application by petition for this purpose, make from time to time all such orders and provisions with respect to the custody, maintenance, and education of such children as might have been made by such final decree, or by interim orders in case the suit for obtaining such decree were still pending.

Orders as to custody of children after final decree.

Settlement of wife's property for benefit of children.

45. In any case in which the Court shall pronounce a decree of divorce or judicial separation for adultery of the wife, if it shall be made to appear to the Court that the wife is entitled to any property, either in possession or reversion, the Court may order such settlement as it shall think reasonable to be made of such property or any part thereof for the benefit of the children of the marriage or any of them.

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* See Act XIV. of 1882, s. 3.

† See 9 Bom. 290.

VI.—Of the Mode of enforcing Penalties under this Act.

Cognizance of offences under Act.

46. All offences under this Act may be tried by any officer exercising the powers of a Magistrate, unless the period of imprisonment to which the offender is liable shall exceed that which such officer is competent to award under the law for the time being in force in the place in which he is employed.

When the period of imprisonment provided by this Act exceeds the period that may be awarded by such officer, the offender shall be committed for trial before the Court of Session.

Punishment of offences under Act, committed within local limits of High Court.

47. If any offence, which by this Act is declared to be punishable with fine, or with fine and imprisonment not exceeding six months, shall be committed by any person within the local limits of the ordinary original civil jurisdiction of the High Court, such offence shall be punishable upon summary conviction by any Presidency Magistrate* of the place at which such Court is held.

Levy of fines by distress.

48. All fines imposed under the authority of this Act may, in case of non-payment thereof, be levied by distress and sale of the offender's moveable property by warrant under the hand of the officer imposing the fine.

Procedure until return made to distress-warrant.

49. In case any such fine shall not be forthwith paid, such officer may order the offender to be arrested and kept in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such officer for his appearance at such place and time as shall be appointed for the return of the warrant of distress.

Imprisonment if no sufficient distress.

50. If upon the return of the warrant it shall appear that no sufficient distress can be had whereon to levy such fine, and the same shall not be forthwith paid, or

in case it shall appear to the satisfaction of such officer, by the confession of the offender or otherwise, that he has not sufficient moveable property whereupon such fine could be levied if a warrant of distress were issued,

any such officer may, by warrant under his hand, commit the offender to prison for any term not exceeding two calendar months when the amount of fine shall not exceed fifty rupees, and for any term not exceeding four calendar months when the amount shall not exceed one hundred rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount of fine.

VII.—Miscellaneous.

Rules of procedure of Pársi Matrimonial Courts to be made by High Court.

51. Subject to the provisions contained or referred to in this Act, the High Court shall make such rules and regulations concerning the practice and procedure of the Pársi Chief and District Matrimonial Courts in the Presidency or Government in which such High Court shall be established as it may from time to time consider expedient, and shall have full power from time to time to revoke or alter the same.

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* See Act X. of 1882, s. 3.

Act XV. of 1865.

All such rules, revocations, and alterations shall be published in the official Gazette.

Power to invest chief executive officer with powers of Local Government.

52. The Governor-General of India in Council may invest the chief executive officer of any part of British India under the immediate administration of the Government of India with the powers vested by this Act in a Local Government.

Extent.

53. This Act shall extend to the whole of British India.

SCHEDULE.

(See section 6.)

Date acnd plae of marriage.	Names of the husband and wife.	Condition at the time of marriage.	Rank or profession.	Age.	Residence.	Names of the fathers or guardians.	Rank or profession.	Signature of the officiating priest.	Signatures of the witnesses.	Signature of father or guardian when husband or wife is an infant.

ACT XXI. OF 1865.*

RECEIVED THE G.-G.'S ASSENT ON THE 10TH APRIL 1865.

An Act to define and amend the Law relating to Intestate Succession among the Pársis.

Preamble.

WHEREAS it is expedient to define and amend the law relating to intestate succession among the Pársis; It is enacted as follows :—

Division of property among widow and children of intestate.

1. Where a Pársi dies leaving a widow and children, the property of which he shall have died intestate shall be divided among the widow and children, so that the share of each son shall be double the share of the widow, and that her share shall be double the share of each daughter.

Division of property among widower and children of intestate.

2. Where a female Pársi dies leaving a widower and children, the property of which she shall have died intestate shall be divided among the widower and such children, so that his share shall be double the share of each of the children.

Division of property amongst children of male intestate leaving no widow.

3. When a Pársi dies leaving children, but no widow, the property of which he shall have died intestate shall be divided amongst the children, so that the share of each son shall be four times the share of each daughter.

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* Act XXI. of 1865 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh	See *Gazette of India*	. Dec. 4, 1880, Pt. I., p. 672.
West Jalpáiguri	Ditto	. Mar. 5, 1881, Pt. I., p. 74.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	. Oct. 22, 1881, Pt. I., p. 504.
The Jhánsi Division . .	Ditto	. Aug. 31, 1878, Pt. I., p. 546.
Kumáon and Garhwál . .	Ditto	. Nov. 4, 1876, Pt. I., p. 605.
The scheduled portion of the Mirzápur district .	Ditto	. May 31, 1879, Pt. I., p. 383.
Jaunsar Bawár	Ditto	. May 31, 1879, Pt. I., p. 382.
The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán .	Ditto	. Jan. 30, 1886, Pt. I., p. 48.
Ajmere and Merwára . .	Ditto	. June 22, 1878, Pt. I., p. 380.
The District of Silhat .	Ditto	. Oct. 4, 1879, Pt. I., p. 631.

It has been extended, under the same Act, to the Scheduled District of the North Western Provinces Tarái.—See *Gazette of India,* Sep. 23, 1876, Pt. I., p. 505.

It has been declared, under the same Act, not to be in force in the Scheduled District of Lahaul.—See *Gazette of India,* May 1, 1886, Pt. I., p. 301.

Act XXI. of 1865.

Division amongst children of female intestate leaving no widower.

4. When a female Pársi dies leaving children, but no widower, the property of which she shall have died intestate shall be divided amongst the children in equal shares.

Division of predeceased child's share among widow or widower and issue of such child.

5. If any child of a Pársi intestate shall have died in his or her life-time, the widow or widower and issue of such child shall take the share which such child would have taken if living at the intestate's death in such manner as if such deceased child had died immediately after the intestate's death.

Division of property when intestate leaves widow or widower, but no lineal descendants.

6. Where a Pársi dies leaving a widow or widower, but without leaving any lineal descendants, his or her father and mother, if both are living, or one of them if the other is dead, shall take one moiety of the property as to which he or she shall have died intestate, and the widow or widower shall take the other moiety.

Where both the father and the mother of the intestate survive him or her, the father's share shall be double the share of the mother.

Where neither the father nor the mother of the intestate survives him or her, the intestate's relatives on the father's side, in the order specified in the first schedule hereto annexed, shall take the moiety which the father and the mother would have taken if they had survived the intestate.

The next-of-kin standing first in the same schedule shall be preferred to those standing second, the second to the third, and so on in succession: provided that the property shall be so distributed as that each male shall take double the share of each female standing in the same degree of propinquity.

If there be no relatives on the father's side, the intestate's widow or widower shall take the whole.

Division of property when intestate leaves neither widow nor widower nor lineal descendants.

7. When a Pársi dies leaving neither lineal descendants nor a widow or widower, his or her next-of-kin, in the order set forth in the second schedule hereto annexed, shall be entitled to succeed to the whole of the property as to which he or she shall have died intestate.

The next-of-kin standing first in the same schedule shall always be preferred to those standing second, the second to the third, and so on in succession: provided that the property shall be so distributed as that each male shall take double the share of each female standing in the same degree of propinquity.

Exemption of Pársis from parts of Indian Succession Act, 1865.

8. The following portions of the Indian Succession Act, 1865,* shall not apply to Pársis (that is to say), the whole of Part III., the whole of Part IV., excepting section 25, the whole of Part V., and section 43.

THE FIRST SCHEDULE.

(1.) Brothers and sisters, and the children or lineal descendants of such of them as shall have predeceased the intestate.

* See *supra*.

(2.) Grandfather and grandmother.

(3.) Grandfather's sons and daughters, and the lineal descendants of such of them as shall have predeceased the intestate.

(4.) Great-grandfather and great-grandmother.

(5.) Great-grandfather's sons and daughters, and the lineal descendants of such of them as shall have predeceased the intestate.

THE SECOND SCHEDULE.

(1.) Father and mother.

(2.) Brothers and sisters, and the lineal descendants of such of them as shall have predeceased the intestate.

(3.) Paternal grandfather and paternal grandmother.

(4.) Children of the paternal grandfather, and the lineal descendants of such of them as shall have predeceased the intestate.

(5.) Paternal grandfather's father and mother.

(6.) Paternal grandfather's father's children, and the lineal descendants of such of them as shall have predeceased the intestate.

(7.) Brothers and sisters by the mother's side, and the lineal descendants of such of them as shall have predeceased the intestate.

(8.) Maternal grandfather and maternal grandmother.

(9.) Children of the maternal grandfather, and the lineal descendants of such of them as shall have predeceased the intestate.

(10.) Son's widow, if she have not re-married at or before the death of the intestate.

(11.) Brother's widow, if she have not re-married at or before the death of the intestate.

(12.) Paternal grandfather's son's widow, if she have not re-married at or before the death of the intestate.

(13.) Maternal grandfather's son's widow, if she have not re-married at or before the death of the intestate.

(14.) Widowers of the intestate's deceased daughters, if they have not re-married at or before the death of the intestate.

(15.) Maternal grandfather's father and mother.

(16.) Children of the maternal grandfather's father, and the lineal descendants of such of them as shall have predeceased the intestate.

(17.) Paternal grandfather's father and mother.

(18.) Children of the paternal grandmother's father, and the lineal descendants of such of them as shall have predeceased the intestate.

plying for hire within the limits of any municipality a cantonment or other place in which any law for the regulation of carriages is for the time being in force.

28. The Local Govt. may by notification in the Official Gazette exempt any carriages or class of carriages from all or any of the provisions of this act.

Act I of 1898 s. 5.

20A. (1) The local post may, by notification in the Official Gazette, make rules to carry out the purposes & objects of this act in the territories under its administration or any part of the said territories.

(2) In particular & without prejudice to the generality of the foregoing power, such rules may —

(a) prescribe forms for licenses under this act, the sums payable for the same & the conditions on which they may be granted & the cases in which they may be revoked;

(b) provide for the inspection of stage carriages, & of the animals employed in drawing them; &

(c) regulate the number & length of the stages for which animals may be driven in stage carriages, & the manner in which they shall be harnessed on & fed.

act I of 1898 s. 4.

22. This act as amended by subsequent acts, extends to the whole of British India: but it shall not apply to carriages ordinarily plying

plying for hire within the limits of any municipality or cantonment or other place in which any law for the regulation of carriages is for the time being in force.

23. The local govt. may by notification in the official gazette, exempt any carriages or class of carriages from all or any of the provisions of this act.

Act I of 1898 s. 5.

ACT V. OF 1866.*

RECEIVED THE G.-G.'S ASSENT ON THE 23RD FEBRUARY 1866.

An Act† to amend in certain respects the Commercial Law of British India.

Preamble.

† WHEREAS inconvenience is felt by persons engaged in trade by reason of the laws of British India being in some particulars different from those of England in matters of common occurrence in the course of such trade; and whereas, with a view to remedy such inconvenience, it is expedient to amend the laws of British India as hereinafter is mentioned; It is enacted as follows :—

Interpretation-clause.

1. In this Act, unless there be something repugnant in the subject or context—

"British India" shall mean the territories which are or may become vested in Her Majesty or Her successors by the Statute 21 & 22 Vic., cap. 106 (*An Act for the better government of India*) :*

"*High Court.*" [*Repealed by Act X. of 1877.*]

"*Local Government.*" [*Repealed by Act X. of 1877.*]

2 *to* **8.** [*Repealed by Act X. of 1877.*]

9, 10. [*Repealed by Act IX. of 1872.*]

11 *to* **13.** [*Repealed by Act XXVI. of 1881.*]

14. [*Repealed by Act X. of 1877.*]

15. Every assignee, by endorsement or otherwise, of a policy of marine insurance or of a policy of insurance against fire, in whom the property in the subject insured shall be absolutely vested at the date of the assignment, shall have transferred to and vested in him all rights of suit as if the contract contained in the policy had been made with himself.‡

Rights under marine and fire-policies to vest in assignees.

SCHEDULE.

(Referred to in section 2.)

[*Repealed by Act X. of 1877—see Act XII. of 1879, section 99.*]

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* Act V. of 1866 has been declared to be in force in the whole of British India, except the Scheduled Districts.—See Act XV. of 1874, s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

West Jalpáiguri, . . .	See *Gazette of India*	. Mar. 5, 1881, Pt. I, p. 74.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum . .	Ditto	. Oct. 22, 1881, Pt. I., p. 504.
The Jhánsi Division . . .	Ditto	. Aug. 31, 1878, Pt. I., p. 546.
The scheduled portion of the Mirzápur District . .	Ditto	. May 31, 1878, Pt. I., p. 383.
Jaunsar Báwar . . .	Ditto	. May 31, 1878, Pt. I., p. 382.
The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán . .	Ditto	. Jan. 30, 1886, Pt. I., p. 48.
The District of Silhat . .	Ditto	. Oct. 4, 1879, Pt. I., p. 631.

It has been extended, under the same Act, to the Scheduled Districts of Kumáon and Garhwál.—See *Gazette of India*, Nov. 4, 1876, Pt. I., p. 606.

It has been declared, under the same Act, not to be in force in the Scheduled Districts of Lahaul.—See *Gazette of India*, May 1, 1886, Pt. I., p. 301.

† Certain words, which were repealed by Act X. of 1877, have been omitted.

‡ Compare Act IX. of 1856 and the Statute 31 & 32 Vic., c. 86.

Act XIV. of 1866.

ACT XIV. OF 1866.*

THE INDIAN POST OFFICE ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 23RD MARCH 1866.

An Act to amend the law for the management of the Post Office, for the regulation of the Duties of Postage, and for the punishment of offences against the Post Office.

Preamble.

WHEREAS it is expedient to amend the law for the management of the post-office, for the regulation of the duties of postage, and for the punishment of offences against the post-office; It is enacted as follows:—

PART I.

PRELIMINARY.

Short title.

1. This Act† may be cited as "The Indian Post Office Act, 1866."

Interpretation-clause.

2. In this Act—unless there be something repugnant in the subject or context—

"Criminal Court" includes every Judge, Magistrate, Justice of the Peace, or Police Magistrate, lawfully exercising jurisdiction in criminal cases:

"Fine" includes a penalty or forfeiture, or a sum of money due upon a forfeited recognizance:

"Clubbed packet" shall be taken to mean a packet containing a collection of letters, not made by an agent of the post-office, transmitted through the post-office with the view of the enclosed letters being delivered to more than one person through the agent of the person by whom the packet was made up:

"Newspaper" shall include any periodical publication, published at regular intervals not exceeding thirty-one days:

"Mails" shall include any letter, parcel, or other article conveyed under the provisions of this Act, as well as any box, bag, or other article, or any carriage, horse, messenger, or other person employed or used by the post-office for the conveyance or safe custody of the mails: and

"British India" includes the territories which are now or shall be vested in Her Majesty or Her successors by the Statute 21 & 22 Vic., cap. 106 (*an Act for the better government of India*).

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* Act XIV. of 1866 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum ...	See *Gazette of India*, Oct. 22, 1884, Pt. I, p. 504.
The North-Western Provinces Tarái	Ditto Sep. 23, 1876, Pt. I., p. 504.

It has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886.

All offences under this Act may be inquired into and tried in a Presidency-town.—See Act X. of 1882, s. 184.

† Certain formal words, which were repealed by Act XIV. of 1870, have been omitted.

3. [*Repealed by Act XIV. of 1870.*] Act XIV. of 1866.

4. References to any section of Act No. XVII. of 1854, made in any Act passed subsequent thereto, shall be read as if made to the corresponding section of this Act.

References to Act XVII. of 1854 read as to this Act.

5 Wheresoever, within British India, posts or postal communications are or shall be established by the Government of India, the said Government shall have the exclusive privilege of conveying by post, from one place to another, all letters, except in the following cases, and shall also have the exclusive privilege of performing all the incidental services of receiving, collecting, sending, despatching, and delivering all letters, except in the following cases, that is to say—

Exclusive privilege of carrying letters vested in Government of India.

(1) letters sent by a private friend in his way, journey, or travel, so as such letters be delivered by such friend to the person to whom they shall be directed, without hire, reward, or other profit or advantage for receiving, carrying, or delivering the same;

(2) letters solely concerning the affairs of the sender or receiver thereof sent by a messenger on purpose;

(3) letters solely concerning goods or other property sent either by sea or land to be delivered with the goods or property which such letters concern, without hire, reward, or other profit or advantage for receiving, carrying, or delivering such letters.

But nothing herein contained shall authorize any person to make a collection of such excepted letters for the purpose of sending them in the manner thereby authorized.

Bar to collection of excepted letters.

6. Wheresoever, within British India, posts or postal communications are or shall be established by the Government of India, the following persons are expressly forbidden to collect, carry, tender, or deliver any letter or letters, or to receive any letter for the purpose of carrying or delivering the same, although they shall not receive hire or reward for so doing, that is to say—

Persons expressly forbidden to collect, carry, or deliver letters.

(1) common carriers of passengers or goods, and their drivers, servants, or agents, except letters solely concerning goods in their carriages:

(2) owners and commanders of ships, steam-boats, or other vessels passing on any river or canal, or to or from any port in British India, and their servants or agents, except letters solely concerning goods on board.

7. For carrying on the service of the post-office, it shall be lawful for the Governor-General of India in Council to appoint, or to authorize the appointment of, such officers, with such official styles or designations, and to invest them with, and delegate to them, such powers, not inconsistent with the provisions of this Act, as the said Governor-General of India in Council may, from time to time, deem expedient.

Appointment of officers for service of post-office.

Act XIV. of 1866.

PART II.

POSTAGE RATES.

Postage-rates on letters.

8. Wheresoever posts or postal communications are or shall be established by the Government of India, postage, if pre-paid by a stamp or stamps as hereinafter provided, shall be charged by weight on letters transmitted by the letter-post by land, according to the following scale :—

On every letter not exceeding a quarter of a tolah in weight,—six pie :

On every letter exceeding a quarter of a tolah, and not exceeding half a tolah in weight,—one anna :

On every letter exceeding half a tolah, and not exceeding one tolah in weight,—two annas :

And for every half tolah in weight above one tolah, one additional anna ; and every fraction of half a tolah above one tolah shall be charged as one additional half tolah.

Every article transmitted by the letter-post shall be deemed a letter within the meaning of this section, unless it be an article on which a different rate of postage shall be chargeable under this Act.

Postage-rates on newspapers.

9. Wheresoever posts or postal communications are or shall be established by the Government of India, postage on newspapers, transmitted by the letter-post by land, shall be charged by weight according to the following scale :—

On every newspaper not exceeding ten tolahs in weight,—one anna :

On every newspaper exceeding ten tolahs, and not exceeding twenty tolahs in weight,—two annas :

And for every ten tolahs in weight above twenty tolahs, one additional anna ; and every fraction of ten tolahs shall be charged as ten additional tolahs.

An extra or supplement to any newspaper, bearing the same date as the newspaper, and transmitted therewith under the same cover, shall be deemed part of the newspaper.

Nothing contained in this Act shall be construed to oblige any person to send any newspaper through the post-office, but it shall be lawful for all persons to send the same in any other manner.

Newspapers how sent by letter-post.

10. A newspaper shall not be sent by the letter-post at the rates prescribed in the last preceding section, unless the following conditions be observed, that is to say—

(1) it shall be without a cover, or in a short cover open at both ends :

(2) there shall be no word printed on such newspaper after its publication, or upon the cover thereof, nor any writing or mark upon it, or upon the cover of it, except the name and address of the person to whom it is sent, and the name and address of the sender :

(3) there shall be no paper or thing enclosed in or with any such newspaper.

11. Any newspaper sent by the letter-post in respect of which the above conditions shall not be observed shall, together with anything enclosed in or with the same, be charged with postage at the rate which would be charged on an unstamped letter of equal weight.

Newspapers when charged with letter-postage.

12. Proof-sheets marked as such may be sent by the letter-post at the rates prescribed for newspapers, provided the contents be correctly certified on the cover by the signature in full of the sender; otherwise the same shall be charged with postage at the rate which would be charged on an unstamped letter of equal weight.

Proof-sheets.

13. Subject to such rules and conditions as the Governor-General of India in Council may from time to time direct, books, packets of newspapers, and other articles, provided the postage thereon be pre-paid by means of a proper stamp or stamps to be affixed thereon as hereinafter provided, shall be charged with the following rates of postage, without reference to the distance to which they may be carried :—

Postage-rates on books, packets of newspapers, &c.

If not exceeding ten tolahs in weight,—one anna :

If exceeding ten tolahs, and not exceeding twenty tolahs in weight,—two annas :

And for every ten tolahs in weight above twenty tolahs, one additional anna; and every fraction of ten tolahs shall be charged as ten additional tolahs.

If the postage chargeable on any such book or other article be not prepaid as aforesaid, it shall be subject to the rate of postage prescribed for banghy-parcels in section 14 of this Act.

14. Inland postage shall be charged by weight and distance, on parcels sent by the banghy-post, according to the following scale :—

Inland banghy-postage.

For distances.		If not exceeding in weight							
		20 Tolahs.	50 Tolahs.	100 Tolahs.	200 Tolahs.	300 Tolahs.	400 Tolahs.	500 Tolahs.	600 Tolahs.
	Miles.	Rs. As.	Rs. As.	Rs. As.	Rs. As.	Rs. As.	Rs. As.	Rs. As.	Rs. As.
Not exceeding ...	300	0 4	0 8	0 12	1 8	2 4	3 0	3 12	4 8
Not exceeding ...	600	0 8	1 0	1 8	3 0	4 8	6 0	7 8	9 0
Not exceeding ...	900	0 12	1 8	2 4	4 8	6 12	9 0	11 4	13 8
Not exceeding ...	1,200	1 0	2 0	3 0	6 0	9 0	12 0	15 0	18 0
Exceeding ...	1,200	1 4	2 8	3 12	7 8	11 4	15 0	18 12	22 8

Provided that not more than one letter shall be enclosed in a banghy-parcel under a penalty not exceeding fifty rupees.

Act XIV. of 1866.

15. Banghy-postage, when chargeable by distance under section 14 of this Act, shall be calculated and charged according to such table of distances as shall be authorized from time to time for that purpose by the Governor-General of India in Council.

Table of distances for calculation of banghy-postage.

And it shall be lawful for the Governor-General of India in Council to declare that the distances from or to post-offices not entered in such table shall, for the purposes of this Act, be regarded as represented by the distances shown in the table from or to the post-offices nearest to them respectively.

Each Post-Master-General shall prepare from the aforesaid table, in the English and vernacular languages, for the use of every post-office under his control, a list of all the other post-offices in India arranged alphabetically, and showing the distance of each of them from the post-office for the use of which it is made, and such list shall be affixed in some conspicuous place in such post-office.

16. Where there is no banghy-post established on any line of road, parcels, books, and other articles shall be received and transmitted by the letter-post, and shall be charged with postage according to the scale in section 13 or 14 of this Act, as the case may be, if it be certified in writing, on such parcel, book-packet, or other article under the full signature and address of the sender, that it does not contain any letter or other written communication on which a higher rate of postage is chargeable under any section of this Act.

Where no banghy-post, parcels, books, &c., carried by letter-post.

If any such certificate be false, any such letter or other written communication contained in such certified parcel, book-packet, or other article, shall be charged with letter-postage as if sent separately; and the sender shall be subject to the penalty hereinafter provided.

Effect of false certificate.

17. All book-packets and parcels not exceeding ten tolahs in weight, sent through the post-office, shall be conveyed by letter-post, and be charged with letter-postage, unless specially directed to be sent by banghy or book-packet post.

When book-packets and parcels to go by letter-post.

18. On all parcels chargeable under section 14 of this Act with banghy-postage according to distance when conveyed by land, ship-postage shall be charged when they are conveyed by means of Her Majesty's Indian post by sea, according to the following scale, that is to say—

Ship-postage on parcels.

On every parcel not exceeding twenty tolahs in weight,—two annas:

On every parcel exceeding twenty tolahs, but not exceeding forty tolahs in weight,—four annas:

On every parcel exceeding forty tolahs, but not exceeding one hundred tolahs in weight,—eight annas:

And for every hundred tolahs in weight above one hundred tolahs,—eight additional annas.

Every fraction of one hundred tolahs above one hundred tolahs shall be charged as one hundred additional tolahs; and if such parcel be conveyed by Her Majesty's Indian post, partly by land and partly by sea, ship-postage shall be charged in addition to inland banghy-postage.

19. It shall be lawful for the Governor-General of India in Council at any time to direct that all or any letters or other articles shall not be forwarded by post, unless the postage thereof shall be fully pre-paid by means of a proper stamp or stamps; or that on all or any letters or other articles on which the postage shall not be fully pre-paid by a stamp or stamps, or otherwise, as the said Governor-General in Council shall direct, there shall be charged such higher rates of postage as from time to time may be deemed expedient, not exceeding double the rates of postage hereinbefore specified.

Governor-General may direct pre-payment of postage in all cases.

20. It shall be lawful for the Governor-General of India in Council from time to time to authorize the levy of postage at rates different from those prescribed in this Act, provided that no increase be made in any particular of the rates prescribed in sections 8 and 9 of this Act.

Governor-General may alter postage rates.

21. It shall be lawful for the Governor-General of India in Council from time to time to direct that postage-duties, different from the rates authorized by this Act, shall be chargeable on letters or other articles to be specified in such order, sent through the post from or to any part of Great Britain, or any British colony, or any foreign country to or from any places in British India.

Governor-General may fix rates of steam-postage.

The postage charged on any letter or other article specified in any order of Council made under this section, whether under the name of steam-postage or any other denomination, shall, after the rates of such postage have been published in the official gazette of any presidency, be recovered in the same manner as postage under this Act.

22. It shall be lawful for the Governor-General of India in Council to fix, from time to time, rates of postage to be levied on all letters or other articles transmitted by post, by sea, or partly by sea and partly by land, from one part or place in India to another.

Governor-General may fix postage rates for article sent wholly or partly by sea.

It shall not be necessary that such rates be uniform; but they may vary according to the conveyance or route by which such letters or other articles shall be sent.

23. It shall be lawful for the Governor-General of India in Council from time to time to fix and order any rate of postage to be charged for the conveyance of letters or other articles by express, in addition to or instead of any other rates of postage chargeable on such letters and articles under this Act.

Governor-General may fix express postage rates.

24. On every letter or other article which shall be re-directed at any post-office or forwarded by post from any place to which it shall have been conveyed by post, there shall be charged for the postage thereof from the place at which the same shall be re-directed, or from which it shall be forwarded, in addition to all other postage paid or due thereon, the rate of postage to which it would be liable if posted and pre-paid by stamp at the place where it shall be re-directed or from which it shall be forwarded.

Re-directed letters.

Act XIV. of 1866.

PART III.

REGISTERED LETTERS.

Letters may be registered.

25. Any person posting a letter or other article shall be entitled to require that it shall be registered at the receiving post-office, and that a receipt shall be granted for such registered letter or article;

Fee for registering.

and it shall be lawful for the Governor-General of India in Council to direct that, in addition to any rates of postage payable under this Act, a fee not exceeding four annas shall be charged on any letter or other article which the sender thereof shall require to be so registered, and such registration-fee shall be paid by means of a stamp or stamps affixed to the letter or other article.

Power to declare in what cases registration compulsory, and direct levy of double registration-fee.

26. It shall be lawful for the Governor-General of India in Council from time to time by order to declare in what cases registration shall be compulsory, and to direct that a double registration-fee shall be levied on the delivery of any letter or other article which ought, under the order of the Governor-General in Council, to have been registered at the time of posting, on which the registration-fee shall not have been pre-paid as directed in section 25.

PART IV.

RE-DELIVERED, UNPAID, UNCLAIMED, AND REFUSED LETTERS.

Re-delivery of letters and other articles once put into post-office.

27. No person having delivered into any post-office any letter or other article shall be entitled to recall the same; but nothing in this section shall prevent the re-delivery of any letter or other article to the sender thereof, subject to such rules and regulations, if any, as the Governor-General of India in Council may, from time to time, prescribe in that behalf.

Liability for postage, of receiver of unpaid letters, &c.

28. The person to whom any letter or other article, the postage of which has not been paid, shall be delivered, shall not be bound to pay the postage if he forthwith return the same unopened; but if he open the same, he shall be bound to pay the postage due thereon.

Sender when liable.

If he forthwith return the same unopened, the sender of the letter or other article shall be bound to pay the postage thereof.

Recovery of postage payment of which refused.

If any person shall refuse to pay any postage which he is legally bound to pay for any letter or other article, the same may be recovered for the use of the Secretary of State for India by any Post-Master-General, or by any officer in charge of a post-office by order of a Post-Master-General, in the same manner as a fine may be recovered under this Act;

Power to detain other letters to person refusing.

and it shall be lawful for the officer in charge of any post-office to withhold from the person so refusing, until such postage be paid, any other letter or other article addressed to that person, not being on Her Majesty's service.

Power to remit postage.

Provided always that, if a letter or other article shall appear to the satisfaction of the Post-Master of the office of delivery to have been maliciously sent for the purpose of annoying the person to whom it is addressed, the Post-Master of the delivery-office may remit the postage.

List of unclaimed letters.

29. *Clause 1.*—A list of all letters and other articles posted and addressed to persons who cannot be found shall be prepared daily in every post-office, and exposed for not less than two weeks in the most conspicuous part of such office;

Return to posting office for delivery to sender.

and all such letters and other articles which shall have remained three weeks unclaimed in any office shall, if the sender's name and address are written on the cover, be returned to the posting office to be delivered to the sender free of all charge.

Letters of which sender not ascertainable without opening.

All letters and other articles of which the sender's name and address cannot be ascertained unless they be opened shall, after remaining unclaimed for three weeks as aforesaid, be forwarded to the office of the Post-Master-General of the presidency.

Opening letters.

Clause 2.—The Post-Master-General or some person duly appointed for the purpose, and bound to secrecy, shall immediately open all such letters or other articles, and, if the addresses of the senders can be discovered, shall enclose them in dead letter covers, and return them to the senders. All letters and other articles of which neither the person addressed nor the sender can be found shall, after they have remained unclaimed in the office of the Post-Master-General for one year, be destroyed.

Return to sender.

When destroyed.

Disposal of money and valuables.

Clause 3.—All money found in any unclaimed letter or other article shall be paid into the public treasury; and all other valuable property found as above shall be sold by the Post-Master-General of the presidency or by some one duly authorized by him for that purpose; and the proceeds of the sale shall be paid into the public treasury for the benefit of any person who may have a right thereto, after deducting all sums due from such person for postage.

Refused letters how dealt with.

30. Every letter or other article rejected unopened by the person to whom it is addressed shall, if any postage is due thereon, and if the sender's name and address are written on the cover, be returned to the posting office in order that the postage due may be recovered from the sender;

in all other cases, or when the sender's name and address are not on the cover, such letter or other article shall be forthwith sent to the office of the Post-Master-General of the presidency, who shall open the letter or other article, and take measures to recover the postage from the sender, or shall, at his discretion, destroy the letter or other article;

Disposal of money and valuables.

and all money or other valuable property which such letter or other article may contain shall be disposed of in the manner prescribed in the preceding section with respect to such money or property contained in unclaimed letters.

Act XIV. of 1866.

PART V.

MAILS ON BOARD INWARD AND OUTWARD-BOUND VESSELS.

Commanders of inward-bound vessels carrying mails how to proceed on arrival.

31. When any vessel arrives by sea at any place within British India at which there is a post-office, the commander of such vessel shall, as speedily as possible, cause every letter, mail-bag, box, and packet on board of such vessel which is directed to that place, and not excepted from the exclusive privilege of the post-office, to be delivered either at the post-office or to some officer of the post-office authorized to receive the same;

and, if there be on board any letter, mail-bag, box, or packet, directed to any other place, and not excepted from the exclusive privilege aforesaid, the said commander shall, as speedily as possible, report the same to the Post-Master of the place at which he has arrived, and shall act according to the directions he may receive from such Post-Master, and the receipt of such Post-Master shall discharge such commander from all responsibility in respect of such letter or packet.

Penalty.

Every commander of a vessel who shall wilfully disobey any of the directions contained in this section shall be punished with a fine not exceeding one thousand rupees.

Penalties for detention of letters on board inward-bound vessel.

32. Every person being either the commander of a vessel inward-bound, or any one on board such vessel, who shall, within British India, knowingly have in his possession any letter not excepted from the privilege of the post-office, after any part of the letters on board the said vessel have been sent to the post-office, shall forfeit, for every such letter, a sum not exceeding fifty rupees, whether the letter be in the baggage or on the person of the offender, or otherwise in his custody;

and every such person who shall detain any such letter after demand made for the same by an officer of the post-office shall forfeit, for every such letter, a sum not exceeding one hundred rupees.

Bounty-money.

33. For every letter delivered by the commander of any ship in conformity with the directions of section 31 of this Act, the officer in charge of the post-office shall pay to the said commander the sum of one anna; and the sum of one anna shall be chargeable as postage on such letter, in addition to any other postage chargeable thereon under this Act:

Limitation of claim thereto.

Provided that no payment shall be made to the commander of any vessel on account of the delivery of any letter, unless the claim of such commander shall be preferred before the vessel leaves the place at which the letter was delivered, or before the expiration of two months from the date of the arrival of such vessel:

Saving of letters, &c., conveyed in mail-ships.

Provided also that nothing contained in section 31 and the former part of this section of this Act shall extend to any letter or mail-bag, or box or packet conveyed by any mail-ship or mail-steamer recognized as such by the Governor-General of India in Council.

34. The commander of every vessel leaving any place in British India by sea shall receive on board of such vessel every letter and packet which he shall be required so to receive by any officer of the post-office, and shall give a receipt for such letter or packet; and every commander of a vessel who shall wilfully disobey any direction contained in this section shall be punished with a fine not exceeding one thousand rupees. Act XIV of 1866.

Commanders of outward-bound vessels to receive mails on board.

PART VI.

POSTAGE-STAMPS.

35. All letters and other articles having a stamp or stamps affixed thereto (such stamp or stamps in every case being affixed on the outside, and being equal in value to the rate or rates of postage to which such letters or other articles are liable under this Act) shall, provided the stamp or stamps shall not have been used before, be considered as pre-paid.

Stamped letters considered pre-paid.

36. The Governor-General of India in Council shall cause postage-stamps to be provided, denoting such values as the said Governor-General of India in Council may direct; and shall give such orders, and make such other regulations relative thereto, as may be deemed expedient.

Postage stamps provided by Government.

37. Postage-stamps, provided as aforesaid, shall be under the care and management of such officer or officers as the Governor-General of India in Council shall from time to time direct.

Management of postage-stamps.

Postage-stamps shall be considered as stamps issued by Government for the purpose of revenue within the meaning of the Indian Penal Code; and all sums of money realized by the sale of such stamps shall be carried in the public accounts to the credit of the post-office.

Purpose of issue.

Crediting sale-proceeds.

38. The Governor-General of India in Council may, from time to time, make rules for the appointment and government of vendors of postage-stamps, and thereby direct how and under what terms and conditions postage-stamps may be supplied to them for sale; and whether any and what security shall be given by such vendors; and whether any and what remuneration or discount shall be allowed to them; and how, and in what manner, and at what time or times, such vendors shall keep and render their accounts, and pay over the proceeds of any sales made by them, or re-deliver the stamps entrusted to them.

Power to make rules for appointment and government of vendors of postage-stamps.

39. Government vendors of postage-stamps shall be bound by such rules, and in case of any wilful breach thereof, shall be punished with a fine not exceeding two hundred rupees, in addition to any other proceedings to which they may be liable.

Penalty for breach of such rules.

40. Any Government vendor of postage-stamps who shall be convicted of refusing, or unnecessarily delaying, without reasonable excuse, to furnish postage-stamps to any person desiring to purchase the same, and tendering in lawful currency the

Penalty for refusing to supply stamps.

Act XIV of 1866.

full value thereof (the stamp-vendor having in his possession for sale sufficient stamps of the description and value required) shall be punished with a fine not exceeding one hundred rupees.

Penalty for selling stamps for price higher than value denoted.

41. Any Government vendor of postage-stamps convicted of taking from a purchaser a higher price than the value denoted on the stamps sold shall be punished, on conviction, with imprisonment of either description, as defined in the Indian Penal Code, for any term not exceeding six months, or shall be liable to a fine not exceeding one hundred rupees; and shall also be liable to refund to the purchaser the whole amount proved to have been taken in excess, which amount may be recovered by such purchaser before a Criminal Court in the same manner as any penalty under this Act.

PART VII.

OFFENCES AGAINST THE POST OFFICE.

Penalty for sending dangerous substance by post.

42. No person shall knowingly post or send, or tender or deliver in order to be sent, by the post, any letter, parcel, or packet containing any explosive or other dangerous material or substance; and any person contravening this prohibition shall be punished, for every such offence, with a fine not exceeding two hundred rupees.

Making false certificate to defraud post-office.

Sending private letter as official.

43. Every person, who shall, for the purpose of defrauding the post-office revenue, wilfully certify by writing on any official or other letter or packet delivered at any post-office for conveyance by post, that which is not true in respect of such letter or packet, or in respect of the whole of its contents, or shall knowingly send or deliver, or attempt to send or deliver, for conveyance by post, any letter or packet with any such false certificate thereon; and every person who shall knowingly send or permit to be sent by post, under colour or pretence of an official communication, any letter, paper, writing, or other enclosure of a private nature,

Penalty.

shall, for every such offence, be punished with a fine not exceeding five hundred rupees.

Penalty for detaining mails or opening mail-bags.

44. It shall not be lawful for any person, unless acting by express order of the Government, to detain, except for a criminal offence, a post-office messenger whilst carrying the mails, or to detain any carriage or horse upon which the mails are being carried, or on any pretence to open a packet or mail-bag or box in transit from one post-office to another; and every person who shall be guilty of any of the offences mentioned in this section shall be punished with a fine not exceeding five hundred rupees.

Penalty for retaining letters, &c., delivered by mistake.

45. Every person who shall fraudulently retain, or wilfully secrete, or make away with, or keep or detain, or, being required to deliver up by an officer of the post-office, shall neglect or refuse to deliver up, a post-letter or other article which ought to have been delivered to any other person, or a mail-bag, box, or packet containing a letter or other article which shall have been sent by the post, shall be punished, on conviction before a Criminal Court, with imprison-

ment of either description as defined in the Indian Penal Code for a term not exceeding two years, and shall also be liable to fine. Act XLV. of 1866.

46. *Clause 1.*—Every person who shall convey, otherwise than by the post, a letter not excepted from the said exclusive privilege conferred on the Government of India by section 5 of this Act, shall, for every letter so conveyed, forfeit a sum not exceeding fifty rupees.

Penalty for conveying letter in breach of privilege.

Clause 2.—Every person who shall perform, otherwise than by the post, any services incidental to conveying letters from place to place, whether by receiving, taking up, ordering, collecting, carrying, tendering, or delivering a letter or letters not excepted from the said exclusive privilege, shall forfeit for every such letter a sum not exceeding fifty rupees.

Penalty for performing, otherwise than by post, services incidental to conveying letters.

Clause 3.—Every person who shall make a collection of letters for the purpose of transmitting them through the post in a clubbed packet, and every person who shall knowingly tender or deliver a letter to be sent in a clubbed packet, shall forfeit for every such letter a sum not exceeding fifty rupees.

Penalty for making clubbed packet, or tendering or delivering letter to be sent therein.

Clause 4.—Every person who shall send a letter not excepted from the said exclusive privilege, otherwise than by the post, or shall either tender or deliver a letter not so excepted, in order to be sent otherwise than by the post, shall forfeit for every such letter a sum not exceeding fifty rupees.

Penalty for sending letter in breach of privilege, or delivering letter to be so sent.

Clause 5.—Every person who shall make a collection of excepted letters for the purpose of sending them otherwise than by the post shall forfeit for every such letter a sum not exceeding fifty rupees.

Penalty for collecting excepted letters to send them otherwise than by post.

Clause 6.—Every person who shall carry, receive, tender, or deliver a letter, or collect letters contrary to the provisions of section 6 of this Act, shall forfeit for every such letter a sum not exceeding fifty rupees.

Penalty for breach of provisions of section 6.

Clause 7.—Every person who shall be in the practice of committing any of the acts mentioned in this section shall, for every week during which the practice shall be continued, forfeit a further sum not exceeding five hundred rupees.

Penalty for practice of acts mentioned in section.

47. Every person employed to convey or deliver any mail-bag or box, or any letter or other article sent by post, who shall be guilty, while so employed, of drunkenness, carelessness, or other misconduct, whereby the safety of any such bag, box, or letter, or other article, shall be endangered ; or who shall loiter or make delay in the conveyance or delivery of any such bag, box, letter, or other article ; or who shall not use proper care and diligence safely to convey or deliver any such bag, letter, or other article, shall be liable to a fine not exceeding fifty rupees ;

Penalty for neglect on part of persons employed to carry mails.

and any person employed to deliver a letter or other article sent by the post, who shall not duly deliver the same, shall, within a reasonable time not exceeding twenty-four hours, report the fact at the post-office where he received such

Act XLV. of 1866.

letter or other article, and return the same; and if any such person shall wilfully make a false report, he shall be liable to a fine not exceeding fifty rupees.

Penalty for stealing, &c., or opening, letters, &c., by persons employed in post-office.

48. Whoever, being in the employ of the Government in the Post-Office Department, shall steal, fraudulently appropriate, or wilfully secrete, destroy, or throw away any letter or other article sent by post, or anything contained in any such letter or other article, or shall mutilate or break open any such letter or other article, or any mail-bag or box, with the intention of fraudulently appropriating anything therein contained, shall be punished, on conviction before a Criminal Court, with imprisonment of either description as defined in the Indian Penal Code for a term not exceeding seven years, and shall also be liable to fine.

Penalty for fraudulently altering marks on letters, &c., by persons employed in post-office.

49. Whoever being in such employ as last aforesaid, shall fraudulently put any wrong mark on any letter or other article, or shall fraudulently alter, remove, or cause to disappear any mark or stamp which is on any letter or other article; or shall fraudulently use or place with or upon any letter or other article any stamp which shall have been removed from any other letter or other article; or, being entrusted with the delivery of any letter or other article, shall knowingly demand or receive any sum of money for the postage thereof other than the sum duly chargeable for such postage, shall be punished, on conviction before a Criminal Court, with imprisonment of either description as defined in the Indian Penal Code for a term not exceeding two years, and shall also be liable to fine.

Penalty for preparing incorrectly, or altering or secreting, documents by persons employed in post-office.

50. Whoever, being in such employ as last aforesaid, and being entrusted with the preparing or keeping of any document, shall, with a fraudulent intention, prepare the document incorrectly, or alter that document, or secrete or destroy that document, shall be punished, on conviction before a Criminal Court, with imprisonment of either description as defined in the Indian Penal Code for a term not exceeding two years, and shall also be liable to fine.

Penalty for sending letters on which postage not paid or charged by persons employed in post-office.

51. Whoever, being in such employ as last aforesaid, shall send by the post, or put into any mail-bag or box, any unstamped letter or other article upon which postage has not been paid or charged in the manner prescribed in this Act, intending thereby to defraud the Government of the postage on such letter or other article, shall be punished, on conviction before a Criminal Court, with imprisonment of either description as defined in the Indian Penal Code for a term not exceeding two years, and shall also be liable to fine.

Penalty for abetting or concealing offences under Act.

52. Whoever abets, within the meaning of the Indian Penal Code, or conceals, any offence made punishable by this Act, shall be punished with the punishment provided for such offence.

Person charged with offence punishable with fine only may be summarily convicted.

53. Any person, whether a European British subject or not, who shall be guilty of any offence for which, according to the provisions of this Act, he shall be liable to a fine only, shall be punishable for such offence by any Criminal Court upon summary conviction.

54. No conviction, order, or judgment of any Criminal Court, shall be quashed for error of form or procedure, but only on the merits; and it shall not be necessary to state on the face of the conviction, order, or judgment, the evidence on which it proceeds; but the depositions taken, or a copy of them, shall be returned with the conviction, order, or judgment; and if no jurisdiction appears on the face of the conviction, order, or judgment, but the depositions taken supply that defect, the conviction, order, or judgment, shall be aided by what so appears in such depositions.

Conviction quashed on merits only.

Form of conviction.

55. [*Repealed by Act XII. of 1876.*]

56. All fines imposed under the authority of this Act, for offences punishable by fine only, by any Criminal Court,* may, in case of non-payment thereof, be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand of any of the above-named officers.

Fines how levied.

In case any such fine shall not be forthwith paid, any such officer may order the offender to be apprehended and detained in safe custody until the return can be conveniently made to such warrant of distress unless the offender shall give security to the satisfaction of such officer for his appearance at such place and time as shall be appointed for the return of the warrant of distress, and such officer may take security by way of recognizance or otherwise.

Detention of offender.

If, upon the return of such warrant, it shall appear that no sufficient distress can be had whereon to levy such fine, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such officer, by the confession of the party or otherwise, that he has not sufficient goods and chattels whereupon such fine or sum of money could be levied if a warrant of distress were issued, any such officer, by warrant under his hand, may commit the offender to prison, there to be imprisoned only, or to be imprisoned and kept to hard labour, according to the discretion of such officer, for any term not exceeding two calendar months where the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four calendar months where the amount shall not exceed one hundred rupees, and for any term not exceeding six calendar months in any other case; the commitment to be determinable in each of the cases aforesaid on payment of the amount.

Imprisonment if no sufficient distress, &c.

57. A share not exceeding one moiety of every fine imposed and recovered under this Act may be awarded to the informer.

Share of fine to informer.

58. No proceedings shall be taken for the recovery of any fine imposed under the authority of this Act, for offences punishable by fine only, without an order of Government, or an order in writing under the hand of the Director-General of the Post-Office, or of a Post-Master-General, or other officer specially invested with the powers of a Post-Master-General.

No proceedings for recovery of fines taken without order.

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* See Act XII. of 1876.

Act XIV. of 1866.

59. If any public servant who shall be employed in the Post-Office Department, or shall be appointed a vendor of postage-stamps, or entrusted by the Government of India or any Local Government with the sale of postage-stamps within the dominions of any Foreign Prince or State in India in alliance with Her Majesty, in which a post shall be established by the Government of India, shall, within the dominions of such Prince or State, commit any act hereby prohibited, or omit to do any act hereby required to be done by any person similarly employed, appointed, or entrusted as aforesaid within British India, such public servant shall be guilty of an offence, and, on conviction thereof, shall be punished in the same manner as if such act had been done or omitted within British India;

Punishment of post-office servants committing offences in allied States.

and every such person may be tried, convicted, and punished, either by fine or otherwise, according to the nature of the offence, by any Court or officer duly empowered by the Governor-General of India in Council to take cognizance of offences committed in such dominions by public servants, or by any Court or Magistrate, or other competent officer in any part of British India, in the same manner as if the offence had been committed in such part.

Officers authorized to try them.

60. If any officer in charge of a post-office shall suspect that any letter or other article lying for delivery at his office contains any contraband article, or any article on which duty is owing to Government; or that any letter or other article lying for delivery at the post-office contains any writing or enclosure in contravention of the provisions of section 14, 16, or 43 of this Act, it shall be lawful for such officer to summon the person to whom the letter or other article is directed to attend at the post-office by himself or agent, within forty-eight hours after the arrival thereof at that post-office, and to open the same in the presence of the person to whom it is directed, or of that person's agent, and, if that person shall not so attend by himself or agent, then to open it in the absence of that person:

Letters, &c., suspected to contain contraband articles or writing in contravention of Act, how dealt with.

Provided that, if the officer in charge be under the rank of a Post-Master, he shall call in two respectable persons as witnesses before he shall open a letter or other article in the absence of the person to whom it is addressed:

Witnesses to examination of letter.

Provided also that in all cases the opened letter or other article shall be subsequently delivered to the person to whom it is addressed, unless it be required for ulterior proceedings, and that the opening of the same and the circumstances connected therewith shall be immediately reported to the Post-Master-General.

Delivery of letter to addressee.

It shall also be lawful for any officer in charge of a post-office to refuse to forward any parcel through the post-office by sea to any foreign port, or to any place not on the Continent of India, unless such parcel be accompanied by a custom-house pass.

Power to require customs-pass.

60A.* Whenever any notification has been published under section 16 of the Sea Customs Act, 1878, in respect of any newspaper, book, pamphlet, placard, broadsheet, or other document, any officer of the Postal Department empowered in this behalf by the Governor-General in Council by name or in virtue of his office, may search, or cause search to be made, for any copies of the same in the custody

Search for newspapers, &c., in respect of which a notification has been published under section 19 of the Sea Customs Act.

* S. 60A has been added by Act III. of 1882, s. 3.

of that Department, and shall deliver all such copies found to such officer as the Governor-General in Council may appoint in this behalf by name or in virtue of his office, and such copies may be disposed of in such manner as the Governor-General in Council may from time to time direct. Act XIV of 1866.

61. Whenever an offence shall be committed in respect of any mail-bag or box, or any letter or other article sent by the post, it shall be lawful to lay, in the charge to be preferred against the offender, the property of such mail-bag, box, letter, or other article in the Post-Master-General of the presidency; and it shall not be necessary in the charge to allege or to prove upon the trial or otherwise that such mail-bag, box, letter, or other article, was of any value; and, in any charge to be preferred against any person employed under the post-office for any offence committed against this Act, it shall be lawful to state that such offender was employed under the post-office at the time of committing the offence without stating further the nature or particulars of his employment.

In charges for offences under Act, property sent by post laid in Post-Master-General.

Proof of value unnecessary.

Statement that offender employed in post-office sufficient.

PART VIII.

MISCELLANEOUS.

62. Letters and other articles on Her Majesty's service, certified to be such by the signature of any public officer authorized in that behalf by the Governor-General of India in Council, shall be forwarded by the post, and the postage due thereon shall be charged to or recovered from the several public departments to or from which such letters or packets are sent, in such manner as the said Governor-General of India in Council shall, from time to time, direct.

Letters on Her Majesty's service, duly certified as such, how charged.

63. It shall be lawful for the Governor-General of India in Council from time to time to frame rules for the conduct of the post-office not inconsistent with this Act, and therein to prescribe the regulations, conditions, and restrictions according to which all letters and other articles shall be posted, forwarded, conveyed, and delivered.

Governor-General may frame rules.

64. It shall be lawful for the Governor-General of India in Council from time to time to frame rules for the management of all or any zamindari, thana, or other district-dâks, and to declare from time to time what portions of this Act shall be applicable to such dâks, and to persons employed in connection therewith.

District-dâks.

65. The Government shall not be responsible for any loss or damage which may occur in respect of anything entrusted to the post-office* for conveyance;

Government not responsible for loss.

and no person employed by the Government in the Post-Office Department shall be responsible for any such loss or damage, unless that person shall cause such loss or damage negligently, maliciously, or fraudulently.

Responsibility of its servants.

* 1 Mad. H. C. R. 202. As to the Government bullock-train, see 3 N.-W. P. H. C. R. 195.

Act XXI. of 1866.

ACT XXI. OF 1866.*

RECEIVED THE G.-G.'S ASSENT ON THE 2ND APRIL 1866.

An Act to legalize, under certain circumstances, the dissolution of marriages of Native Converts to Christianity.

Preamble.

WHEREAS it is expedient to legalize, under certain circumstances, the dissolution of marriages of Native Converts to Christianity deserted or repudiated, on religious grounds, by their wives or husbands; It is enacted as follows:—

Short title.

1. This Act may be cited as "The Native Converts' Marriage Dissolution Act, 1866."

2. [*Repealed by Act XVI. of 1874.*]

Interpretation-clause.

2. In this Act—

"Native husband" shall mean a married man domiciled in British India, who shall have completed the age of sixteen years, and shall not be a Christian, a Muhammadan, nor a Jew:

"Native wife" shall mean a married woman domiciled in British India, who shall have completed the age of thirteen years, and shall not be a Christian, a Muhammadan, nor a Jewess:

"Native law" shall mean any law, or custom having the force of law, of any persons domiciled in British India other than Christians, Muhammadans, and Jews:

"Month" and "year" shall respectively mean month and year according to the British calendar.

"High Court" shall mean the highest Civil Court of appeal in any place to which this Act extends:

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* Act XXI. of 1866 has been declared to be in force in the whole of British India, except the Scheduled Districts.—See Act XV. of 1874, s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh	See *Gazette of India*	Dec. 4, 1880, Pt. I., p. 672.
West Jalpáiguri	Ditto	Mar. 5, 1881, Pt. I., p. 74.
The District of Dárjiling	Ditto	Aug. 28, 1886, Pt. I., p. 500.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	Oct. 22, 1881, Pt. I., p. 504.
The Jhánsi Division	Ditto	Aug. 31, 1878, Pt. I., p. 546.
The scheduled portion of the Mirzápur District	Ditto	May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	May 31, 1879, Pt. I., p. 382.
The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán.	Ditto	Jan. 30, 1886, Pt. I., p. 48.
The District of Silhat	Ditto	Oct. 4, 1879, Pt. I., p. 631.
The District of Lahaul	Ditto	May 1, 1886, Pt. I., p. 301.

It has been extended, under the same Act, to the following Scheduled Districts:—

Kumáon and Garhwál	See *Gazette of India*	Nov. 4, 1876, Pt. I., p. 606.
The North-Western Provinces Tarái	Ditto	Sep. 23, 1876, Pt. I., p. 505.

And, unless there be something repugnant in the subject or context, words importing the singular number shall include the plural, and words importing the plural number shall include the singular.

When convert deserted by his wife may sue for conjugal society.

4. If a Native husband change his religion for Christianity, and if in consequence of such change his Native wife, for the space of six continuous months, desert or repudiate him, he may sue her for conjugal society.

When convert deserted by her husband may sue.

5. If a Native wife change her religion for Christianity, and if in consequence of such change her Native husband, for the space of six continuous months, desert or repudiate her, she may sue him for conjugal society.

Court in which suit shall be brought.

6. If the respondent, at the time of commencement of such suit, reside within the local limits of the ordinary original civil jurisdiction of any of the High Courts of Judicature, the suit shall be commenced in such Court; otherwise it shall be commenced in the principal Civil Court of original jurisdiction of the district in which the defendant shall reside at the commencement of the suit.

Suit to be commenced by verified petition.

7. The suit shall be commenced by a petition in the form in the first schedule to this Act, or as near thereto as the circumstances of the case will allow.

The statements made in the petition shall be verified by the petitioner in the manner required by law for the verification of plaints; and the petition* may be amended by permission of the Court.

On service of petition, citation to respondent.

8. A copy of the petition shall be served upon the respondent, and the Court shall thereupon issue a citation under the seal of the Court and signed by the Judge.

Form of citation.

9. In ordinary cases the citation shall be in the form in the second schedule to this Act, or as near thereto as the circumstances of the case will allow.

But where the respondent is exempt by law from personal appearance in Court, or where the Judge shall so direct, the citation shall be in the form in the third schedule to this Act, or as near thereto as the circumstances of the case will allow.

Service of citation.

10. A copy of the citation sealed with the seal of the Court shall be served on the respondent; and the provisions of the Code of Civil Procedure† as to the service and endorsement of summonses shall apply, *mutatis mutandis*, to citations under this Act.

Penalty on respondent not obeying citation.

11. If the respondent shall not obey such citation, and comply with every other requirement made upon her or him under the provisions of this Act, she or he shall be liable to punishment under section 174 of the Indian Penal Code‡.

Points to be proved on appearance of petitioner.

12. On the day fixed in the citation the petitioner shall appear in Court, and the following points shall be proved :—

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* Certain words regarding court-fee, which were repealed by Act VII. of 1870, have been omitted. For court-fee, see now Act VII. of 1870, Schedule II., No. 14.

† See Act XIV. of 1882, s. 3.

‡ See *supra*.

Act XXI. of 1866.

(1.) The identity of the parties:

(2.) The marriage between the petitioner and the respondent:

(3.) That the male party to the suit has completed the age of sixteen years, and that the female party to the suit has completed the age of thirteen years:

(4.) The desertion or repudiation of the petitioner by the respondent:

(5.) That such desertion or repudiation was in consequence of the petitioner's change of religion:

(6.) And that such desertion or repudiation had continued for the six months immediately before the commencement of the suit.

First interrogation of respondent.

13. The respondent, if such points be proved to the satisfaction of the Judge, shall thereupon be asked whether she or he refuses to cohabit with the petitioner, and, if so, what is the ground of such refusal.

In ordinary cases such interrogation and every other interrogation prescribed by this Act shall be made by the Judge; but when the respondent is exempt by law from personal appearance in Court, or when the Judge shall, in his discretion, excuse the respondent from such appearance, the interrogations shall be made by Commissioners acting under such commission as hereinafter mentioned.

Interrogations by Judge may be public or private.

14. Every interrogation mentioned in this Act and made by the Judge, may, at the discretion of the Judge, take place in open Court or in his private room.

If any such interrogation take place in open Court, the Judge may, so long as it shall continue, exclude from the Court all such persons as he shall think fit to exclude.

Procedure when female respondent refuses to cohabit with petitioner.

15. If the respondent be a female, and in answer to the interrogatories of the Judge or Commissioners, as the case may be, shall refuse to cohabit with the petitioner, the Judge, if upon consideration of the respondent's answers and of the facts which may have been proved by the petitioner he shall be of opinion that the ground for such refusal is the petitioner's change of religion, shall make an order adjourning the case for a year, and directing that, in the interim, the parties shall, at such place and time as he shall deem convenient, have an interview of such length as the Judge shall direct, and in the presence of such person or persons (who may be a female or females) as the Judge shall select, with the view of ascertaining whether or not the respondent freely and voluntarily persists in such refusal.

Adjournment for a year.

Interview.

Procedure on expiration of adjournment.

Interrogation of respondent.

Decree.

16. At the expiration of such adjournment the petitioner shall again appear in Court, and shall prove that the said desertion or repudiation had continued up to the time last hereinbefore referred to; and if the points mentioned in the twelfth and this section of this Act shall be proved to the satisfaction of the Judge, and if the respondent, on being interrogated by the Judge or Commissioners, as the case may be, again refuse to cohabit with the petitioner, the respondent shall be taken to have finally deserted or repudiated the petitioner, and the Judge shall, by a decree under his hand, and sealed with the seal of his Court, declare that the marriage between the parties is dissolved.

17. If the respondent be a male, and in answer to the interrogatories of the Judge or Commissioners, as the case may be, shall refuse to cohabit with the petitioner, the Judge, if upon consideration of the respondent's answers and of the facts which may have been proved by the petitioner he shall be of opinion that the ground for such refusal is the petitioner's change of religion, shall adjourn the case for a year.

Decree in case of male respondent refusing to cohabit on ground of petitioner's change of religion.

At the expiration of such adjournment, the petitioner shall again appear in Court; and if the respondent on being interrogated by the Judge or Commissioners, as the case may be, again refuse to cohabit with the petitioner, the Judge shall thereupon pass such a decree as last aforesaid:

Provided that, if the petitioner shall so desire (but not otherwise), the proceedings in the suit shall, *mutatis mutandis*, be the same as in the case of a female respondent.

Proviso.

18. Notwithstanding anything hereinbefore contained, if it shall appear at any stage of the suit that both or either of the parties had not attained puberty at the date of their marriage, and that such marriage has not been consummated; and if, in answer to the interrogatories made pursuant to the thirteenth section of this Act, the respondent shall refuse to cohabit with the petitioner, and allege, as the ground for such refusal, that the petitioner has changed his or her religion, the Judge shall thereupon pass such a decree as last aforesaid.

Decree if respondent so refuse in case of unconsummated marriage, either party being *impubes* at time of marriage.

19. When any decree dissolving a marriage shall have been passed under the provisions of this Act, it shall be as lawful for the respective parties thereto to marry again as if the prior marriage had been dissolved by death, and the issue of any such remarriage shall be legitimate, any Native law to the contrary notwithstanding:

Liberty to parties to marry again.

Provided always that no minister of religion shall be compelled to solemnize the marriage of any person whose former marriage may have been dissolved under this Act, or shall be liable to any suit or penalty for refusing to solemnize the marriage of any such person.

20. In suits instituted under this Act, the Judge shall order a commission to issue to such persons, whether males or females or both, as he shall think fit, for the examination on interrogatories or otherwise of any persons so exempt as aforesaid.

Judge to order commission to issue for examination of exempted persons.

The provisions of the Code of Civil Procedure shall, so far as practicable, apply to commissions issued under this section.

21. At any stage of a suit instituted under this Act, cohabitation as man and wife shall be sufficient presumptive evidence of the marriage of the parties, and proof of the respondent's refusal or voluntary neglect to cohabit with the petitioner, after his or her change of religion and after knowledge thereof by the respondent, shall be sufficient evidence of the respondent's desertion or repudiation of the petitioner, and shall also be sufficient evidence that such desertion or repudiation was in consequence

Proof of marriage and desertion or repudiation of petitioner in consequence of conversion.

Act XXI. of 1866.

of the petitioner's change of religion, unless some other sufficient cause for such desertion or repudiation be proved by the respondent.

Civil Procedure Code applied.

22. The provisions of the Code of Civil Procedure as to the summoning and examination of witnesses shall apply in suits instituted under this Act.

Dismissal of suit if either party under age required by Act, or if parties cohabiting, or respondent willing to cohabit.

23. If at any stage of the suit it be proved that the male party to the suit is or was at the institution thereof under the age of sixteen years, or that the female party to the suit is or was at the same time under the age of thirteen years, or that the petitioner and the respondent are cohabiting as man and wife, or if the Court is satisfied by the evidence adduced that the respondent is ready and willing so to cohabit with the petitioner, the Court shall pass a decree dismissing the suit, and stating the ground of such dismissal.

Revival of suit after such dismissal.

24. If at any time within twelve months after a decree dismissing the suit upon any of the grounds mentioned in the last preceding section, the respondent again desert or repudiate the petitioner upon the ground of his or her change of religion, the suit may be revived by summoning the respondent; and upon proof of the former decree and of such renewed repudiation or desertion, the suit shall recommence at the stage at which it had arrived immediately before the passing of such decree; and, after the proofs, interrogations, interview, and adjournment which may then be requisite under the provisions hereinbefore contained, the Judge shall pass a decree of the nature mentioned in the sixteenth section of this Act.

Petitioner's cruelty or adultery to bar suit.

25. If at any stage of the suit it be proved that the respondent has deserted or repudiated the petitioner solely or partly in consequence of the petitioner's cruelty or adultery, the Court shall pass a decree dismissing the suit and stating the ground of such dismissal. A suit dismissed under this section shall not be revived.

Male petitioner's cohabitation with one of several wives to bar suit.

26. If the petitioner, being a male, has at the time of the institution of the suit two or more wives, he shall make them all respondents; and if at any stage of the suit it be proved that he is cohabiting with one of such wives as man and wife, or that any one of such wives is ready and willing so to cohabit with him, the Court shall pass a decree dismissing the suit and stating the ground of such dismissal.

The provisions as to revival contained in the twenty-fourth section of this Act shall apply, *mutatis mutandis*, to a suit dismissed under this section.

Dissolution of marriage not to affect status or rights of children.

27. A dissolution of marriage under the provisions of this Act shall not operate to deprive the respondent's children (if any) by the petitioner of their status as legitimate children, or of any right or interest which they would have had, according to the Native law applicable to them, by way of maintenance, inheritance, or otherwise, in case the marriage had not been so dissolved as aforesaid.

Power to Court to award alimony.

28. If a suit be commenced under the provisions of this Act, and it appear to the Court that the wife has not sufficient separate property to enable her to maintain herself suitably to her station in life and to prosecute or defend the suit, the Court

may, pending the suit, order the husband to furnish the wife with sufficient funds to enable her to prosecute or defend the suit, and also for her maintenance pending the suit.

If the suit be brought by a husband against a wife, the Court may, by the decree, order the husband to make such allowance to his wife for her maintenance during the remainder of her life as the Court shall think just, and having regard to the condition and station in life of the parties.

Any allowance so ordered shall cease from the time of any subsequent marriage of the wife.

No appeal under Act; but Judge may state case raising question whether conversion has dissolved marriage.

29. No appeal shall lie against any order or decree made or passed by any Court in any suit instituted under this Act; but if, at any stage of the suit, the respondent shall allege by way of defence that the marriage between the parties has been dissolved by the conversion of the petitioner, and that consequently the petitioner is not a Native husband or a Native wife (as the case may be) within the meaning of this Act, the Judge, if he shall entertain any doubt as to the validity of such defence, shall, either of his own motion, or on the application of the respondent, state the case, and submit it with his own opinion thereon for the decision of the High Court.

Case to state necessary facts and documents and suit to be stayed.

30. Every such case shall concisely set forth such facts and documents as may be necessary to enable the High Court to decide the questions raised thereby, and the suit shall be stayed until the judgment of such Court shall have been received as hereinafter provided.

Case to be decided by three Judges.

31. Every such case shall be decided by at least three Judges of the High Court, if such Court be the High Court at any of the presidency-towns; and the petitioner and respondent may appear and be heard in the High Court in person or by advocate or vakil.

High Court may refer case to Judge for additions or alterations.

32. If the High Court shall not be satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the High Court may refer the case back to the Judge by whom it was stated, to make such additions thereto or alterations therein as the High Court may direct in that behalf.

High Court may decide question raised, and Judge shall dispose of case accordingly.

33. It shall be lawful for the High Court, upon the hearing of any such case, to decide the questions raised thereby, and to deliver its judgment thereon containing the grounds on which such decision is founded;

and it shall send to the Judge by whom the case was stated a copy of such judgment under the seal of the Court and the signature of the registrar, and the Judge shall, on receiving the same, dispose of the case conformably to such judgment.

Saving of Roman Catholic marriages.

34. Nothing contained in this Act shall be taken to render invalid any marriage of a Native convert to Roman Catholicism if celebrated in accordance with the rules, rites, ceremonies, and customs of the Roman Catholic Church.

Act XXI. of 1866.

Extent of Act.

35. This Act shall extend to all the territories that are or shall become vested in Her Majesty or Her successors by the Statute 21 & 22 Vic., cap. 106, entitled, "An Act for the better government of India." *

THE FIRST SCHEDULE.

FORM OF PETITION.

Stamp. *

To the Judge of the Civil Court of

The day of 18 .

The petition of *A. B.* of

Sheweth :—

1. That your petitioner was born on or about the day of 18 .

2. That your petitioner was on the day of in the year 18 lawfully married to *C. D.* at

3. That the said *C. D.* is now of the age of years or thereabouts.

4. That after his said marriage, your petitioner lived and cohabited with his said wife at aforesaid until the day of 18

5. That previous to the day of 18 your petitioner changed his religion for Christianity, and that on such day he was baptized and became a member of the Church of

6. That on the day of 18 [*at least six months prior to the date of the petition*], the said *C. D.* deserted your petitioner, and has not since resumed cohabitation with him.

7. That such desertion was in consequence of your petitioner's said change of religion.

8. That there is no collusion nor connivance between your petitioner and the said *C. D.*

Your petitioner therefore prays that your Honour will order the said *C. D.* to live and cohabit with your petitioner, or declare that your petitioner's marriage is dissolved.

A. B.

Form of verification.

I, *A. B.*, the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

THE SECOND SCHEDULE.

FORM OF CITATION IN ORDINARY CASES.

To *C. D.* of

Whereas *A. B.* of , claiming to have been lawfully married to you the said *C. D.*, has filed his [*or* her] petition against you in the Civil Court of , alleging that you the said *C. D.* have deserted him [*or* her] for six months in consequence of his [*or* her] having changed his [*or* her] religion for Christianity, and

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* Certain words, repealed by Act XII. of 1891, Sch. I., have been omitted.

praying that, unless you consent to live and cohabit with him [*or* her], it may be declared that his [*or* her] marriage is dissolved : Now this is to command you that, at the expiration of days [*at least one month*] from the date of the service of this on you, you do appear in the said Court then and there to make answer to the said petition, a copy whereof, sealed with the seal of the said Court, is herewith served upon you.

And take notice that in default of your so appearing, you will be liable to punishment under section 174 of the Indian Penal Code.

Dated the day of 18 .

(Signed) *E. F.*,

Judge of the Civil Court of .

Indorsement to be made after service.

This citation was duly served by *G. H.* on the within-named *C. D.* of at on the day of 18 .

(Signed) *G. H.*

THE THIRD SCHEDULE.

FORM OF CITATION IN CASE OF RESPONDENT EXEMPT FROM APPEARANCE IN COURT.

To *C. D.* of

Whereas *A. B.* of , claiming to have been lawfully married to you the said *C. D.*, has filed his [*or* her] petition against you in the Civil Court of alleging that you the said *C. D.* have deserted him [*or* her] for six months in consequence of his [*or* her] having changed his [*or* her] religion for Christianity, and praying that, unless you consent to cohabit with him [*or* her], it may be declared that his [*or* her] marriage is dissolved : Now this is to command you that, at the expiration of days [*at least one month*] from the service of this on you, you do hold yourself in readiness to answer and do answer such interrogatories as may be put to you by Commissioners duly authorized in that behalf under a commission issued by this Court, in reference to the said petition, a copy whereof, sealed with the seal of the said Court, is herewith served upon you.

And take notice that in default of your so holding yourself in readiness and answering such interrogatories, you will be liable to punishment under section 174 of the Indian Penal Code.

Dated the day of 18 .

(Signed) *E. F.*,

Judge of the Civil Court of .

Indorsement to be made after service.

This citation was duly served by *G. H.* on the within-named *C. D.* of at on the day of 18 .

(Signed) *G. H.*

Acts XXIII. and XXV. of 1866.

ACT XXIII. OF 1866.

RECEIVED THE G.-G.'S ASSENT ON THE 17TH MAY 1866.

An Act to correct two clerical errors in the Letters Patent for the High Court of Judicature for the Presidency of Bombay.

Preamble.

WHEREAS the twenty-second section of the Letters Patent for the High Court of Judicature for the Presidency of Bombay, dated the 28th December 1865, is as follows: "And we do further ordain that the said High Court of Judicature at Bombay shall have ordinary original criminal jurisdiction within the local limits of its ordinary original civil jurisdiction, and also in respect of all *such* persons beyond such limits over whom the said High Court of Judicature at *Fort William in Bengal* shall have criminal jurisdiction at the date of the publication of these presents;" And whereas it is expedient to correct the two clerical errors in such section which are hereinbefore indicated by italics; It is hereby enacted as follows:—

Clause substituted for section 22 of revised Letters Patent of Bombay High Court.

1. In lieu of the said recited section, the following shall be substituted:—

"And we do further ordain that the said High Court of Judicature at Bombay shall have ordinary original criminal jurisdiction within the local limits of its ordinary original civil jurisdiction, and also in respect of all persons beyond such limits over whom the said High Court of Judicature at Bombay shall have criminal jurisdiction at the date of the publication of these presents."

ACT XXV. OF 1866.*

RECEIVED THE G.-G.'S ASSENT ON THE 11TH JULY 1866.

An Act to transfer to the Government of India certain securities and moneys deposited in the High Courts of Judicature at Fort William, Madras, and Bombay.

Preamble.

WHEREAS it is expedient that certain securities and sums of money deposited in the High Courts of Judicature at Fort William, Madras, and Bombay in the course of suits in the said Courts,† and† appearing to have been in such deposit for a period of twenty years or upwards, without any claim thereto having been made and allowed during that period, should be transferred and paid to the Government of India for the general purposes of government:

Moneys deposited in High Courts and unclaimed for twenty years transferred to Government.

1. All securities and sums of money deposited in the said High Courts, or any of them, in the course of suits in any of the said Courts,† and† appearing to have been in such deposit for a period of twenty years or upwards, without any claim thereto having been made and allowed during that period, shall be transferred and paid to the Government of India for the general purposes of government.

* The portions of this Act which referred to the Administrator-General of Bengal (which were repealed by Acts XXIV. of 1867 and XII. of 1876), and those which referred to the Supreme Court of the Straits Settlement (which were repealed by Acts XVI. of 1874 and XII. of 1876), have been omitted.

† Here certain words, repealed by Act XII. of 1891, Sch. I., have been omitted.

2. [*Repealed by Act XVI. of 1874.*]

Transfer not made pending suits.

3. Nothing in this Act shall authorize any transfer or payment of any such securities, sums of money, or proceeds as aforesaid pending any suit already instituted or which shall hereafter be instituted in respect thereof.

Repayment on subsequent establishment of claim.

4. If any claim shall hereafter be made to any part of the securities, moneys, or proceeds which shall be transferred and paid to the Government of India under the provisions of this Act, and if such claim shall in the case of securities and moneys transferred and paid under the first section of this Act, be established to the satisfaction of the High Court from which the transfer shall have been made, the Government of India shall pay to the claimant the amount of the principal so transferred and paid as aforesaid, or so much thereof as shall appear to be due to the claimant.*

ACT XXIII. OF 1866.

THE OUDH SUB-SETTLEMENT ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 12TH OCTOBER 1866.

An Act to legalize the rules made by the Chief Commissioner of Oudh for the better determination of certain claims of subordinate proprietors in that Province.

Preamble.

WHEREAS rules have been made by the Chief Commissioner of Oudh for the better determination of certain claims by persons possessed of subordinate rights of property in the territories subject to his administration; and whereas it is expedient that such rules should have the force of law; It is hereby enacted as follows:—

Rules as to sub-settlements contained in schedule to have force of law.

1. The rules for determining the conditions under which persons possessed of subordinate rights of property in taluqas in the territories subject to the administration of the Chief Commissioner of Oudh shall be entitled to obtain a sub-settlement of lands, villages, or sub-divisions thereof, which they held under taluqdárs on or before the thirteenth day of February 1856, and for determining the amounts payable to the taluqdár by such subordinate proprietors, which rules were made by the said Chief Commissioner, sanctioned by the Governor-General of India in Council, and published in the *Gazette of India* for September 1st, 1866, and which are re-published in the schedule to this Act, are hereby declared to have the force of law.

2. [*Repealed by Act XIV. of 1870.*]

Short title.

3. This Act may be called "The Oudh Sub-Settlement Act, 1866."

SCHEDULE.

Rules regarding Sub-settlements and other subordinate Rights of Property in Oudh.

1. The extension of the term of limitation for the hearing of claims to under-proprietary rights in land makes of itself no alteration in the principles hitherto observed in the recognition of a right to sub-settlement.

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* As to the costs of petitions under this section, see Act V. of 1870.

Act XXVI. of 1866.

2. When no rights are proved to have been exercised or enjoyed by an under-proprietor during the period of limitation, beyond the possession of certain lands as *sir* or *nankar*, no sub-settlement can be made; but the claimant will be entitled, in accordance with the rules contained in the circular orders which have hitherto been in force in Oudh upon this subject, to the recognition of a proprietary right in such lands. To entitle a claimant to obtain a sub-settlement, he must show that he possesses an under-proprietary right in the lands of which the sub-settlement is claimed, and that such right has been kept alive, over the whole area claimed, within the period of limitation. He must also show that he, either by himself or by some other person or persons from whom he has inherited, has, by virtue of his under-proprietary right, and not merely through privilege granted on account of service, or by favour of the taluqdár, held such lands under contract (*pakka*) with some degree of continuousness since the village came into the taluqa.

3. The words "some degree of continuousness" will be interpreted as follows:—

If the village was included in the taluqa before the thirteenth February 1836, the lease must have been held for not less than twelve years between that date and the annexation of the Province. If the village was included in the taluqa after the thirteenth February 1836, but before the thirteenth February 1844, the lease must have been held for not less than one year more than half the period between the time in which the village was so included and the annexation of the Province. Further, the lease must, in all cases, have been held for not less than seven years during the term of limitation, unless the village was included for the first time in the taluqa after the thirteenth February 1844, in which case the lease must have been held for not less than one year more than half of the period between the time in which the village was so included and the annexation of the Province. Provided that, if for any reason, the taluqdár was, for any period, dispossessed of the village, and the under-proprietor was dispossessed from the lease during the same period, the term of such dispossession shall not be reckoned against the under-proprietor. Provided also, that nothing in this rule will apply to any village which was included for the first time in the taluqa after the thirteenth February 1844, and in which the under-proprietor has held no lease for any period under the taluqdár.

4. If an under-proprietor, who is entitled to a sub-settlement, can show by documentary evidence that he had entered into an agreement with the taluqdár that he should hold, in perpetuity, the lease of the lands to the sub-settlement of which he is entitled, at a uniform (*istimrári*) rate of payment, and that such agreement has been acted on within the period of limitation, he will not be liable to payment at an increased rate during the currency of the present or revised settlement. If, in consequence of any future re-adjustment of the Government demand, the former proportion between the respective shares of the profits derived from the land by the under-proprietor and the taluqdár should be altered, the amount payable by the under-proprietor to the taluqdár will be liable to re-adjustment, so that the proportion between their respective shares of the profits may remain unaltered.

5. If an under-proprietor, entitled to sub-settlement, can show by documentary evidence that he had entered into an agreement with the taluqdár that he should hold the lease of the lands to the sub-settlement of which he is entitled, on payment of the Government demand imposed before the annexation of the province on such lands, with the addition only of certain dues to the taluqdár, or other charges, and such agreement has been acted upon within the period of limitation, such under-proprietor will in future be liable only for the payment to the taluqdár of the Government demand for the time being, with the addition of ten per cent. in lieu of taluqdári dues and other charges.

6. If an under-proprietor, entitled to sub-settlement, has held the lease of the lands to the sub-settlement of which he is entitled, under an agreement that he shall pay to the taluqdár a certain share or proportion of the profits or produce of such lands, and such agreement has been acted upon within the term of limitation, the under-proprietor will in future continue to be liable for the payment to the taluqdár of such share or proportion.

7. In all cases in which an under-proprietor is entitled to a sub-settlement other than those described in rules 4 to 6, the amount payable by the under-proprietor to the taluqdár will be determined according to the following principles :—

1st.—The payments made by the under-proprietor to the taluqdár before annexation will form the standard by which the present payments are to be regulated ;

2nd.—In no case can the amount payable by the under-proprietor to the taluqdár, during the currency of the settlement, exceed the gross rental of the village, less ten per cent. in *sir* or *nankar* land ;

3rd.—In no case can the amount payable during the currency of the settlement, by the under-proprietor to the taluqdár, be less than the amount of the revised Government demand, with the addition of ten per cent. ;

4th.—If the gross rental of the village before annexation and at the present time be approximately the same, the under-proprietor will pay to the taluqdár the same amount which he paid before annexation ;

5th.—If the present gross rental of the village exceed or fall short of the former gross rental, the payment of the under-proprietor to the taluqdár will be adjusted according to the following rule, namely, as the former gross rental is to the former payment of the under-proprietor, so is the present gross rental to the present payment of the under-proprietor ;

6th.—In determining the amount payable by the under-proprietor to the taluqdár under the two last preceding rules, the former gross rental and the former payment of the under-proprietor will be held to be the average amount of the gross rental, and the average amount of the former payments of the under-proprietor for the twelve years preceding annexation, or for such portion of that time as the under-proprietor held a lease of the village from the taluqdár, or for such portion of that time as the necessary information may be obtained.

8. In any case in which the clear share of the profit to which the under-proprietor is entitled under the rules contained in the last preceding paragraph does not exceed twelve per cent. of the gross rental, no sub-settlement shall be made. In this case, the under-proprietor will retain all *sir* and *nankar* land to which his right is established. If the profits derived from such land be less than one-tenth of the whole rental of the land to the sub-settlement of which the right was established, the taluqdár shall increase the amount of such land so that the total profit to the under-proprietor shall not fall below one-tenth of the gross rental. The under-proprietor will possess, in the whole of such lands, a transferable and heritable right of property.

9. In any case in which an under-proprietor is entitled to a sub-settlement under the preceding rules, and in which the share of the gross rental which such under-proprietor is entitled to receive exceeds twelve per cent., but falls short of twenty-five per cent., such share will be increased so that it shall not be less than twenty-five per cent. of the gross rental. The cost of such increase will be borne half by the Government and half by the taluqdár. In this case, the cesses on account of roads, schools, &c., amounting to two and a half per cent. on the Government demand, will be payable by the taluqdár, while the village-expenses, including the allowances to the patwári and chaukidár, will be payable by the under-proprietor.

10. When a former proprietor, who is not entitled to a sub-settlement, has retained within the period of limitation, either by himself or by some other person or persons from whom he has inherited, possession of land which by virtue of his proprietary right he held as *sir* or *nankar* when he was in proprietary possession, he will be deemed, in respect of such land, to be an under-proprietor, and will possess a heritable and transferable right of property therein, subject to the payment of such amount as may be due by him to the superior proprietor.

11. If, in any case, the founder of a purwa or hamlet, who is unable to establish a right to sub-settlement, can show that, in consideration of having founded such durwa or hamlet, he has held therein, within the period of limitation, posses-

Act XXVII. of 1866.

sion of *sir* or *nankar* land, he will be recognized as an under-proprietor in such land, subject to the payment of such amount as may be due by him to the taluqdar. The amount of such payment will be determined according to the rules for determining the amount of the payments due by other under-proprietors on their *sir* or *nankar* lands.

12. Claims to proprietary and under-proprietary rights in jagirs will be treated according to the same rules which are applicable to similar claims in taluqas.

13. Cases in which claims to under-proprietary rights have been disposed of otherwise than in accordance with these rules will be open to revision, but this rule will not apply to cases disposed of by arbitration or by agreement of the parties.

SIMLA,
The 20th August 1866.

J. STRACHEY,
Chief Commissioner of Oudh.

ACT XXVII. OF 1866.*

RECEIVED THE G.-G.'S ASSENT ON THE 24TH OCTOBER 1866.

An Act to consolidate and amend the law relating to the conveyance and transfer of property in British India vested in Mortgagees and Trustees, in cases to which English Law is applicable.

Preamble.

WHEREAS it is expedient to consolidate and amend the laws relating to the conveyance and transfer of moveable and immoveable property in British India vested in mortgagees and trustees, in cases to which English law is applicable; It is hereby enacted as follows:—

1. [*Repealed by Act XIV. of 1870.*]

Interpretation-clause.

2. In this Act, unless there be something repugnant in the subject or context,—

"Immoveable property" shall extend to and include messuages, tenements, and hereditaments, corporeal and incorporeal, of every tenure or description, whatever may be the estate or interest therein:

"Stock" shall mean any fund, annuity, or security transferable in books kept by any company or society established or to be established, or transferable by deed alone, or by deed accompanied by other formalities, and any share† or interest therein. It shall also include shares in ships registered under the Merchant Shipping Act, 1854, or at any port in British India:‡

"Hold" and "Holding" shall be applicable to any vested estate, whether for life or of a greater or less description, in possession, futurity, or expectancy in any immoveable property:

"Contingent right," as applied to immoveable property, shall mean a contingent or executory interest, or possibility coupled with an interest whether the object of the gift or limitation of such interest or possibility be or be not ascertained; also a right of entry, whether immediate or future, and whether vested or contingent:

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* Act XXVII. of 1866 applies only to the Lower Provinces, the North Western Provinces, the Presidencies of Madras and Bombay, and the Panjáb. It is mainly founded on 13 & 14 Vic., c. 60, and 15 & 16 Vic., c. 55.

† *Re Angelo*, 5 DeG. & S. 278.

‡ 18 & 19 Vic., c. 91, s. 10.

"Convey" and "Conveyance," applied to any person, shall mean the execution by such person of every necessary or suitable assurance for conveying or disposing to another immoveable property which such person holds, or in which he is entitled to a contingent right, either for the whole estate of the person conveying or disposing, or for any less estate, together with the performance of all formalities required by law to the validity of such conveyance, including the acts to be performed by married women and tenants-in-tail in accordance with the provisions of Act XXXI. of 1854 (*to simplify the modes of conveying land in cases to which the English law is applicable*):

"Transfer" shall mean the execution and performance of every deed and act by which a person entitled to stock or Government securities can transfer such stock or Government securities from himself to another:

"High Court" shall mean every Court now or hereafter established under the Statute 24 & 25 Vic., cap. 104, and also the Chief Court of the Panjáb, or such one or more Judges of the said Courts respectively as shall be appointed by the Chief Justice or the senior Judge,* as the case may be, to entertain applications and make orders under this Act:

"Trust" shall not mean the duties incident to an estate conveyed by way of mortgage; but, with this exception, the words "Trust" and "Trustee" shall extend to and include implied and constructive trusts, and shall extend to and include cases where the trustee has some beneficial estate or interest in the subject of the trust, and shall extend to and include the duties incident to the office of executor or administrator of a deceased person:

"Lunatic" shall mean any person who shall have been found by due course of law to be of unsound mind and incapable of managing his affairs:

"Person of unsound mind" shall mean any person not a minor who, not having been found to be a lunatic, shall be incapable from infirmity of mind to manage his own affairs:

In the case of a will made or an intestacy occurring before the first day of January 1866,† "Heir" shall mean the person claiming an interest in the immoveable property of a deceased person under the laws concerning descent applicable to such property: and "Devisee" shall, in addition to its ordinary signification, mean the heir of a devisee and the devisee of an heir, and generally any person claiming an interest in the immoveable property of a deceased person, not as heir of such deceased person, but by a title dependent solely upon the operation of the laws concerning devise and descent:

In the case of a will made or an intestacy occurring on or after the first day of January 1866† "Heir" shall mean any person claiming an interest in the immoveable property of a deceased person under the rules for the distribution of an intestate's estate; and "Devisee" shall mean any person taking immoveable property under a bequest, and any person, other than an executor or administrator, claiming an interest in immoveable property, not as entitled thereto under the said rules, but by a title dependent solely upon the operation of the laws concerning intestate and testamentary succession:

"Mortgage" shall be applicable to every estate or interest in immoveable or moveable property which would in the High Court be deemed merely a security for money:

"Person" shall include any company or association, or body of persons whether incorporated or not:

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* See Act No. IV. of 1866, s. 3.

† The day on which the Indian Succession Act (X. of 1865) came into force.

Act XXVII. of 1866.

Words importing the singular number only shall extend to several persons or things; words importing the plural number shall apply to one person or thing; words importing the masculine gender shall extend to a female.*

High Court to have jurisdiction in what cases.

3. The powers and authorities given by this Act to the High Courts shall and may be exercised only in cases to which English law is applicable, and may be exercised with respect to property within the local limits of the extraordinary original civil jurisdiction of the said Courts respectively.

High Court may convey estates of lunatic trustees and mortgagees;

4. When any lunatic or person of unsound mind shall hold any immoveable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order that such property be vested in such person or persons in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the trustee or mortgagee had been sane, and had duly executed a conveyance of the property in the same manner for the same estate.†

and may convey contingent rights.

5. When any lunatic or person of unsound mind shall be entitled to any contingent right in any immoveable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order wholly releasing such property from such contingent right or disposing of the same to such person or persons as the said High Court shall direct; and the order shall have the same effect as if the trustee or mortgagee had been sane, and had duly executed a deed so releasing or disposing of the contingent right.‡

High Court may transfer stock or Government securities of lunatic trustees and mortgagees.

6. When any lunatic or person of unsound mind shall be solely entitled to any stock or Government securities, or to anything in action upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order vesting in any person or persons the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for and recover such thing in action, or any interest, in respect thereof;

and when any person or persons shall be entitled jointly with any lunatic or person of unsound mind to any stock or Government securities, or thing in action, upon any trust or by way of mortgage, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, either in such person or persons so jointly entitled as aforesaid, or in such last-mentioned person or persons together with any other person or persons the said High Court may appoint.§

Power to transfer stock or Government securities of deceased persons.

7. When any stock or Government securities shall be standing in the name of any deceased person whose executor or administrator is a lunatic or person of unsound mind, or when anything in action shall be vested in any lunatic or person of unsound mind as the executor or administrator of a deceased person,

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* Compare 13 & 14 Vic., c. 60, s. 2.
† Compare 13 & 14 Vic., c. 60, s. 3.
‡ Compare 13 & 14 Vic., c. 60, s. 4.
§ Compare 13 & 14 Vic., c. 60, s. 5.

it shall be lawful for the High Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof in any person or persons the said Court may appoint.*

High Court may convey estates of minor trustees and mortgagees.

8. Whenever any minor† shall hold any immoveable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order vesting such property in such person or persons in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the minor trustee or mortgagee had attained his majority, and had duly executed a conveyance of the property in the same manner for the same estate.‡

Contingent rights of minor trustees and mortgagees.

9. Where any minor shall be entitled to any contingent right in any immoveable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order wholly releasing such property from such contingent right, or disposing of the same to such person or persons as the said Court shall direct; and the order shall have the same effect as if the minor had attained his majority, and had duly executed a deed so releasing or disposing of the contingent right.§

High Court may convey estate of trustee out of jurisdiction of Court.

10. When any person solely holding any immoveable property upon any trust shall be out of the jurisdiction of the High Court, or cannot be found, it shall be lawful for the said Court to make an order vesting such property in such person or persons, in such manner and for such estate as the said Court shall direct, and the order shall have the same effect as if the trustee had duly executed a conveyance of the property in the same manner and for the same estate.‖

High Court may make order where persons hold immoveable property in trust jointly with persons out of jurisdiction.

11. When any person or persons shall hold any immoveable property in trust jointly with a person not within the jurisdiction of the High Court, or who cannot be found, it shall be lawful for the said Court to make an order vesting the property in the person or persons so jointly holding, or in such last-mentioned person or persons together with any other person or persons, in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the trustee out of the jurisdiction, or who cannot be found, had duly executed a conveyance of the property in the same manner for the same estate.¶

Contingent rights of trustees.

12. When any person solely entitled to a contingent right in any immoveable property upon any trust shall be out of the jurisdiction of the High Court, or cannot be found, it shall be lawful for the said Court to make an order wholly releasing such property from such contingent right, or disposing of the same to such person or persons as the said Court shall direct; and the order shall have the same effect as if the trustee had duly executed a conveyance so releasing or disposing of the contingent right.**

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* Compare 13 & 14 Vic., c. 60, s. 6.
† See Act No. IX. of 1875.
‡ Compare 13 & 14 Vic., c. 60, s. 7.
§ Compare 13 & 14 Vic., c. 60, s. 8.
‖ Compare 13 & 14 Vic., c. 60, s. 9.
¶ Compare 13 & 14 Vic., c. 60, s. 10.
** Compare 13 & 14 Vic., c. 60, s. 11.

Act XXVII. of 1866.

High Court may make order where persons jointly entitled with others out of jurisdiction to contingent right in immoveable property.

13. When any person jointly entitled with any other person or persons to a contingent right in any immoveable property upon any trust shall be out of the jurisdiction of the High Court, or cannot be found, it shall be lawful for the said Court to make an order disposing of the contingent right of the person out of the jurisdiction, or who cannot be found, to the person or persons so jointly entitled as aforesaid, or to such last-mentioned person or persons together with any other person or persons; and the order shall have the same effect as if the trustee out of the jurisdiction, or who cannot be found, had duly executed a conveyance so releasing or disposing of the contingent right.*

When uncertain which of several trustees survived.

14. Where there shall have been two or more persons jointly holding any immoveable property upon any trust, and it shall be uncertain which of such trustees was the survivor, it shall be lawful for the High Court to make an order vesting such property in such person or persons, in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the survivor of such trustees had duly executed a conveyance of the property in the same manner for the same estate.†

When uncertain whether last trustee living or dead.

15. Where any one or more person or persons shall have held any immoveable property upon any trust, and it shall not be known, as to the trustee last known to have held such property, whether he be living or dead, it shall be lawful for the High Court to make an order vesting such property in such person or persons, in such manner and for such estate, as the said Court shall direct; and the order shall have the same effect as if the last trustee had duly executed a conveyance of the property in the same manner for the same estate ‡

When trustee dies without heir.

16. When any person holding any immoveable property upon any trust shall have died intestate as to such property without an heir, or shall have died, and it shall not be known who is his heir or devisee, it shall be lawful for the High Court to make an order vesting such property in such person or persons, in such manner and for such estate, as the said Court shall direct; and the order shall have the same effect as if the heir or devisee of such trustee had duly executed a conveyance of the property in the same manner for the same estate.§

Contingent right of unborn trustee.

17. When any immoveable property is subject to a contingent right in an unborn person, or class of unborn persons, who, upon coming into existence, would in respect thereof hold such property upon any trust, it shall be lawful for the High Court to make an order which shall wholly release and discharge such property from such contingent right, in such unborn person or class of unborn persons, or to make an order which shall vest in any person or persons the estate or estates which such unborn person or class of unborn persons would, upon coming into existence, hold in such property.‖

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* Compare 13 & 14 Vic., c. 60, s. 12.
† Compare 13 & 14 Vic., c. 60, s. 13.
‡ Compare 13 & 14 Vic., c. 60, s. 14.
§ Compare 13 & 14 Vic., c. 60, s. 15.
‖ Compare 13 & 14 Vic., c. 60, s. 16.

Power to make order for vesting estate on refusal or neglect of trustee to convey or release.

18. In every case where any person holds or shall hold jointly or solely any immoveable property, or is or shall be entitled to a contingent right therein upon any trust, and a demand shall have been made upon such trustee by a person entitled to require a conveyance of such property, or a duly-authorized agent of such last-mentioned person, requiring such trustee to convey the same, or to release such contingent right, it shall be lawful for the High Court, if the said Court shall be satisfied that such trustee has wilfully refused or neglected to convey the said property for the space of twenty-eight days after such demand, to make an order vesting such property in such person or persons, in such manner and for such estate as the Court shall direct, or releasing such contingent right in such manner as the Court shall direct; and the said order shall have the same effect as if the trustee had duly executed a conveyance of the property, or a release of such right, in the same manner and for the same estate.*

Power to convey in place of mortgagee.

19. When any person to whom any immoveable property has been conveyed by way of mortgage shall have died without having entered into the possession or into the receipt of the rents and profits thereof, and the money due in respect of such mortgage shall have been paid to a person entitled to receive the same, or such last-mentioned person shall consent to an order for the reconveyance or vesting of such property, then in any of the following cases it shall be lawful for the High Court to make an order vesting such property in such person or persons, in such manner and for such estate as the said Court shall direct, that is to say,—

when an heir or devisee of such mortgagee shall be out of the jurisdiction of the High Court, or cannot be found:

when an heir or devisee of such mortgagee shall, upon a demand by a person entitled to require a conveyance of such property, or a duly-authorized agent of such last-mentioned person, have stated in writing that he will not convey the same, or shall not convey the same for the space of twenty-eight days next after a proper deed for conveying such property shall have been tendered to him by a person entitled as aforesaid, or a duly-authorized agent of such last-mentioned person:

when it shall be uncertain which of several devisees of such mortgagee was the survivor:

when it shall be uncertain as to the survivor of several devisees of such mortgagee or as to the heir of such mortgagee, whether he be living or dead:

when such mortgagee shall have died intestate as to such property and without an heir, or shall have died, and it shall not be known who is his heir or devisee:

and the order of the said High Court made in any one of the foregoing cases shall have the same effect as if the heir or devisee, or surviving devisee, as the case may be, had duly executed a conveyance of the property in the same manner and for the same estate.†

Power to appoint person to convey in certain cases.

20. In every case where the High Court shall, under the provisions of this Act, be enabled to make an order having the effect of a conveyance of any immoveable property,

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* Compare 15 & 16 Vic., c. 55, s. 2. † Compare 13 & 14 Vic., c. 60, s. 19.

Act XXVII. of 1866.

or having the effect of a release or disposition of the contingent right of any person or persons, born or unborn, it shall also be lawful for the High Court, should it be deemed more convenient to make an order appointing a person to convey such property, or release or dispose of such contingent right;

and the conveyance, or release or disposition of the person so appointed, shall, when in conformity with the terms of the order by which he is appointed, have the same effect, in conveying the property, or releasing or disposing of the contingent right, as an order of the High Court would in the particular case have had under the provisions of this Act.

In every case where the High Court shall, under the provisions of this Act, be enabled to make an order vesting in any person or persons the right to transfer any stock transferable in the books of any company or society established or to be established, it shall also be lawful for the High Court, if it be deemed more convenient, to make an order directing the secretary or any officer of such company or society at once to transfer, or join in transferring, the stock to the person or persons to be named in the order:

and this Act shall be a full and complete indemnity and discharge to all companies or societies and their officers and servants for all acts done or permitted to be done pursuant thereto.*

When trustees of stock or Government securities joined with trustees out of jurisdiction.

21. When any person or persons shall be jointly entitled with any person out of the jurisdiction of the High Court, or who cannot be found, or concerning whom it shall be uncertain whether he be living or dead, to any stock or Government securities or thing in action upon any trust, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for or recover such thing in action or any interest in respect thereof, either in such person or persons so jointly entitled as aforesaid, or in such last-mentioned person or persons together with any person or persons the said Court may appoint.

When any sole trustee of any stock, Government securities, or thing in action shall be out of the jurisdiction of the said Court, or cannot be found, or it shall be uncertain whether he be living or dead, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in any person or persons the said Court may appoint.†

When trustee of stock, &c., refuses to transfer.

22. Where any sole trustee of any stock, Government securities, or thing in action, shall neglect or refuse to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for or recover such thing in action, or any interest in respect thereof, according to the direction of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by the person absolutely entitled thereto, it shall be lawful for the High Court to make an order vesting the sole right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for and recover such thing in action, or any

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* Compare 13 & 14 Vic., c. 60, s. 20. † Compare 13 & 14 Vic., c. 60, s. 22

interest in respect thereof, in such person or persons as the said Court may appoint.*

When one of several trustees of stock, &c., refuses to transfer or receive and pay over dividends.

23. Where any one of the trustees of any stock, Government securities, or thing in action, shall neglect or refuse to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for or recover such thing in action according to the direction of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by such person, it shall be lawful for the High Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for and recover such thing in action, in the other trustee or trustees of the said stock, Government securities, or thing in action, or in any person or persons whom the said Court may appoint jointly with such other trustee or trustees.†

When stock, &c., standing in name of deceased person.

24. When any stock or Government securities shall be standing in the sole name of a deceased person, and his executor or administrator shall be out of the jurisdiction of the High Court, or cannot be found, or it shall be uncertain whether such executor or administrator be living or dead, or such executor or administrator shall neglect or refuse to transfer such stock or Government securities, or receive the dividends, interest, or income thereof, according to the direction of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by the person entitled as aforesaid, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, in any person or persons whom the said Court may appoint.‡

Effect of order vesting legal right to transfer stock, &c.

25. Where any order shall have been made under this Act vesting the right to any stock or Government securities in any person or persons appointed by the High Court, such legal right shall vest accordingly, and thereupon the person or persons so appointed are hereby authorized and empowered to execute all deeds and powers-of-attorney, and to perform all acts relating to the transfer of such stock and Government securities into his or their own name or names or otherwise, or relating to the receipt of the dividends, interest, or income thereof, to the extent and in conformity with the terms of such order.

Obligation to comply with requisitions of person invested.

All companies and associations whatever, and all persons, shall be equally bound and compellable to comply with the requisitions of such person or persons so appointed as aforesaid, to the extent and in conformity with the terms of such order, as such companies, associations, or persons would have been bound and compellable to comply with the requisitions of the person in whose place such appointment shall have been made, and shall be equally indemnified in complying with the requisition of such person or persons so appointed as they would have been indemnified in complying with the requisition of the person in whose place such appointment shall have been made.

Indemnity.

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* Compare 13 & 14 Vic., c. 60, s. 23. † Compare 13 & 14 Vic., c. 60, s. 24.
‡ Compare 13 & 14 Vic., c. 60, s. 25.

Act XXVII. of 1866.

Termination of powers of person replaced.

After notice in writing of any such order of the High Court concerning any stock or Government securities shall have been given, it shall not be lawful for any company or association, or any person having received such notice, to act upon the requisition of the person in whose place an appointment shall have been made, in any matter relating to the transfer of such stock or Government securities, or the payment of the dividends, interest, or income thereof.*

Effect of order vesting legal right in thing in action.

26. Where any order shall have been made under this Act by the High Court, vesting the legal right to sue for or recover any thing in action, or any interest in respect thereof, in any person or persons, such legal right shall vest accordingly; and thereupon it shall be lawful for the person or persons so appointed to carry on, commence, and prosecute, in his or their own name or names, any suit or other proceeding for the recovery of such thing in action, in the same manner in all respects as the person in whose place an appointment shall have been made could have sued for or recovered such thing in action.†.

On neglect to transfer stock, &c., for twenty-eight days, order made vesting right to transfer in such person as Court appoints.

27. Where any person shall neglect or refuse to transfer any stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for or recover anything in action, or any interest in respect thereof, for the space of twenty-eight days next after an order of the High Court for that purpose shall have been served upon him, it shall be lawful for the said Court to make an order vesting all the right of such person to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in such person or persons as the said Court may appoint.‡

Similar order on like neglect by executor.

28. When any stock or Government securities shall be standing in the sole name of a deceased person, and his executor or administrator shall refuse or neglect to transfer such stock or Government securities, or receive the dividends, interest, or income thereof for the space of twenty-eight days next after an order of the High Court for that purpose shall have been served upon him, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, in any person or persons whom the said Court may appoint.§

Legal right to transfer stock to vest in person appointed by High Court.

29. When any order being or purporting to be under this Act shall be made by the High Court, vesting the right to any stock or Government securities, or vesting the right to transfer any stock or Government securities, or vesting the right to call for the transfer of any stock or Government securities, in any person or persons, in every such case the legal right to transfer such stock or Government securities shall vest accordingly;

Powers of person appointed.

and the person or persons so appointed shall be authorized and empowered to execute all deeds and powers-of-attorney, and to perform all acts relating to the transfer of such stock or Government securities into his or their own name or

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* Compare 13 & 14 Vic., c. 60, s. 26.
† Compare 13 & 14 Vic., c. 60, s. 27.
‡ Compare 15 & 16 Vic., c. 55, s. 4.
§ Compare 15 & 16 Vic., c. 55, s. 5.

names or otherwise, to the extent and in conformity with the terms of the order.

All companies and associations, and all persons, shall be equally bound and compellable to comply with the requisitions of such person or persons so appointed as aforesaid, to the extent and in conformity with the terms of such order, as such companies, associations, or persons would have been bound and compellable to comply with the requisitions of the person in whose place such appointment shall have been made.*

Obligation to comply with his requisitions.

30. When any minor shall be solely entitled to any stock or Government securities upon any trust, it shall be lawful for the High Court to make an order vesting in any person or persons the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof..

Power to make order for transfer or receipt of dividends of stock, &c., in name of minor trustee.

When any minor shall be entitled jointly with any other person or persons to any stock or Government securities upon any trust, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, either in the person or persons jointly entitled with the minor, or in him or them together with any other person or persons the said Court may appoint.†

31. When a decree or order shall have been made by the High Court directing the sale of any immoveable property for the payment of the debts of a deceased person, every person holding such property, or entitled to a contingent right therein, as heir, or under the will of such deceased debtor, shall be deemed so to hold or be entitled (as the case may be) upon a trust within the meaning of this Act:

When decree made for sale of immoveable property for payment of debts.

and the High Court is hereby empowered to make an order wholly discharging the contingent right, under the will of such deceased debtor, of any unborn person.‡

32. When any decree or order shall have been made by the High Court, whether before or after the passing of this Act, directing the sale of any immoveable property for any purpose whatever, every person holding such property, or entitled to a contingent right therein, being a party to the suit or proceeding in which such decree or order shall have been made, and bound thereby, or being otherwise bound by such decree or order, shall be deemed so to hold or be entitled (as the case may be) upon a trust within the meaning of this Act.

Holding immoveable property, the sale of which has been ordered by High Court.

In every such case, it shall be lawful for the High Court, if the said Court shall think it expedient for the purpose of carrying such sale into effect, to make an order vesting such property or any part thereof, for such

Order for vesting estate in lieu of conveyance by party to suit in order to carry out sale.

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* Compare 15 & 16 Vic., c. 55, s. 6.
† Compare 15 & 16 Vic., c. 55, s. 3.
‡ Compare 13 & 14 Vic., c. 60, s. 29.

‡ S. 31 is repealed in places to which the Transfer of Property Act, 1882, extends or is extended.—See Act IV. of 1882, s. 2.

Act XXVII. of 1866.

estate as the Court shall think fit, either in any purchaser or in such other person as the Court shall direct.

Effect of order.

Every such order shall have the same effect as if the person so holding or entitled had been free from all disability, and had duly executed all proper conveyances and assignments of such property for such estate.*

Court to declare what parties are trustees of immoveable property comprised in suit, and as to interests of persons unborn.

33. Where any decree or order shall be made by the High Court for the specific performance of a contract concerning any immoveable property, or for the partition or exchange of any immoveable property, or generally when any decree shall be made for the conveyance of any immoveable property, either in cases arising out of the doctrine of election or otherwise, it shall be lawful for the said Court to declare that any of the parties to the said suit wherein such decree is made are trustees of such property, or any part thereof, within the meaning of this Act, or to declare concerning the interests of unborn persons who might claim under any party to the said suit, or under the will or voluntary settlement of any person deceased who was during his lifetime a party to the contract or transactions concerning which such decree is made, that such interests of unborn persons are the interests of persons who, upon coming into existence, would be trustees within the meaning of this Act.

Thereupon it shall be lawful for the High Court to make such order or orders as to the estates, rights, and interests of such persons, born or unborn, as the said Court might, under the provisions of this Act, make concerning the estates, rights, and interests of trustees born or unborn.†

Power to direct how right to transfer stock shall be exercised.

34. It shall be lawful for the High Court to make declarations and give directions concerning the manner in which the right to any stock, Government securities, or thing in action vested under the provisions of this Act shall be exercised, and thereupon the person or persons in whom such right shall be vested shall be compellable to obey such directions and declarations by the same process as that by which other orders under this Act are enforced.‡

Power to Court to make order appointing new trustees.

35. In all cases in which it shall be expedient to appoint a new trustee or new trustees, and it shall be found inexpedient, difficult, or impracticable so to do without the assistance of the High Court, it shall be lawful for the said Court to make an order appointing a new trustee or new trustees, whether there be any existing trustee or trustees or not at the time of making such order, and if there be such trustee or trustees, either in substitution for, or in addition to, him or them §

Powers of new trustees.

The person or persons who, upon the making of such order, shall be trustee or trustees shall have the same rights and powers as he or they would have had if appointed by decree in a suit duly instituted.‖

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* Compare 15 & 16 Vic., c. 55, s. 1.
† Compare 13 & 14 Vic., c. 60, s. 30.
‡ Compare 13 & 14 Vic., c. 60, s. 31.
§ Compare 13 & 14 Vic., c. 60, s. 32.
‖ Compare 13 & 14 Vic., c. 60, s. 33.

36. It shall be lawful for the High Court, upon making any order for appointing a new trustee or new trustees, either by the same or by any subsequent order to direct that any immoveable property subject to the trust shall vest in the person or persons who, upon the appointment, shall be the trustee or trustees, for such estate as the Court shall direct.

Power to Court to vest immoveable property in new trustee.

Such order shall have the same effect as if the person or persons, who, before such order, was or were the trustee or trustees (if any), had duly executed all proper conveyances of such property for such estate.

37. It shall be lawful for the High Court, upon making any order for appointing a new trustee or new trustees, either by the same or by any subsequent order, to vest the right to call for a transfer of any stock or Government securities subject to the trust, or to receive the dividends, interest, or income thereof, or to sue for or recover any thing in action subject to the trust, or any interest in respect thereof, in the person or persons who, upon the appointment, shall be the trustee or trustees.*

Power to Court to vest right to sue in new trustees.

38. Any such appointment by the High Court of new trustees, and any such conveyance or transfer as aforesaid, shall operate no further or otherwise as a discharge to any former or continuing trustee, than an appointment of new trustees under any power for that purpose contained in any instrument would have done.†

Old trustees not discharged from liability.

39. An order under any of the hereinbefore contained provisions, for the appointment of a new trustee or new trustees, or concerning any immoveable property, stock, or Government securities, or thing in action subject to a trust, may be made upon the application of any person beneficially interested in such immoveable property, stock, Government securities, or thing in action, whether under disability or not, or upon the application of any person duly appointed as a trustee thereof; and an order under any of the provisions hereinbefore contained, concerning any immoveable property, stock, Government securities, or thing in action subject to a mortgage, may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the moneys secured by such mortgage.‡

Who may apply.

40. When any person shall deem himself entitled to an order under any of the provisions hereinbefore contained, it shall be lawful for him to present a petition to the High Court for such order as he may deem himself entitled to, and he may give evidence by affidavit or otherwise in support of such petition before the said Court, and may serve such person or persons with notice of such petition as he may deem entitled to service thereof.§

Application may be by petition.

41. Upon the hearing of any such petition, it shall be lawful for the said High Court, should it be deemed necessary, to direct a reference to one of the Judges of the Court to inquire into any facts which require such an investigation, or it shall be lawful for the said Court to direct such petition to stand over, to enable the petitioner to adduce evidence or further evidence before the Court, or to enable

What may be done upon petition.

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* Compare 13 & 14 Vic., c. 60, s. 34.
† Compare 13 & 14 Vic., c. 60, s. 36.
‡ Compare 13 & 14 Vic., c. 60, s. 37.
§ Compare 13 & 14 Vic., c. 60, s. 40.

Act XXVII. of 1866.

notice or any further notice of such petition to be served upon any person or persons.*

Court may dismiss petition with or without costs.

42. Upon the hearing of any such petition, it shall be lawful for the High Court to dismiss such petition with or without costs, or to make an order thereupon in conformity with the provisions of this Act.†

Power to make order in cause.

43. Whensoever in any cause or matter, either by the evidence adduced therein, or by the admissions of the parties, or by report of one of the Judges of the Court, the facts necessary for an order under this Act shall appear to the High Court to be sufficiently proved, it shall be lawful for the said Court, either upon the hearing of the said cause or of any petition or application in the said cause or matter, to make such order under this Act ‡

Orders by High Court founded on certain allegations conclusive evidence of matter contained therein.

44. Whenever any order shall be made under this Act by the High Court for the purpose of conveying any immoveable property, or for the purpose of releasing or disposing of any contingent right, and such order shall be founded on an allegation of the personal incapacity of a trustee or mortgagee or an allegation that a trustee or the heir or devisee of a mortgagee is out of the jurisdiction of the High Court, or cannot be found, or that it is uncertain which of several trustees, or which of several devisees of a mortgagee, was the survivor, or whether the last trustee, or the heir, or last surviving devisee of a mortgagee, be living or dead, or on an allegation that any trustee or mortgagee has died intestate without an heir, or has died, and it is not known who is his heir or devisee, then in any of such cases the fact that the High Court has made an order upon such an allegation shall be conclusive evidence of the matter so alleged in any Court of Civil Judicature upon any question as to the legal validity of the order:

Powers as to re-conveyance of immoveable property, &c.

Provided always that nothing herein contained shall prevent the High Court directing a re-conveyance of any immoveable property conveyed or assigned by any order under this Act, or a re-disposition of any contingent right conveyed or disposed of by such order; and it shall be lawful for the said Court to direct any of the parties to any suit concerning such property or contingent right, to pay any costs occasioned by the order under this Act, when the same shall appear to have been improperly obtained.§

Trustee of charity.

45. It shall be lawful for the High Court to exercise the powers herein conferred for the purpose of vesting any immoveable property, stock, Government securities, or thing in action in the trustee or trustees of any charity or society, over which charity or society the High Court would have jurisdiction upon suit duly instituted, whether such trustee or trustees shall have been duly appointed by any power contained in any deed or instrument, or by the decree of the said Court, or by order made upon a petition to the said Court.‖

Money of minors and persons of unsound mind to be paid into Court.

46. Where any minor or person of unsound mind shall be entitled to any money payable in discharge of any immoveable property, stock, Government securities, or thing in action conveyed or transferred under this Act, it

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* Compare 13 & 14 Vic., c. 60, s. 41.
† Compare 13 & 14 Vic., c. 60, s. 42.
‡ Compare 13 & 14 Vic., c. 60, s. 43.
§ Compare 13 & 14 Vic., c. 60, s. 44.
‖ Compare 13 & 14 Vic., c. 60, s. 45.

shall be lawful for the person by whom such money is payable to pay the same into the High Court, in trust in any cause then depending concerning such money, or, if there shall be no such cause, to the credit of such minor or person of unsound mind, subject to the order or disposition of the said Court;

and it shall be lawful for the said Court, upon petition in a summary way, to order any money so paid to be invested in Government securities, and to order payment or distribution thereof, or payment of the dividends or interest thereof, as to the said Court shall seem reasonable.*

Court may make decree in absence of trustee.

47. Where, in any suit commenced or to be commenced in the High Court, it shall be made to appear to the Court that diligent search and enquiry have been made, after any person made a defendant, who is only a trustee, to serve him with the process of the Court, and that he cannot be found, it shall be lawful for the said Court to hear and determine such cause, and to make such absolute decree therein against every person who shall appear to it to be only a trustee, and not otherwise concerned in interest in the matter in question, in such and the same manner as if such trustee had been duly served with the process of the Court, and had appeared at the hearing of such cause:

Decree not effective without service of process.

Provided always that no such decree shall bind, affect, or in any wise prejudice any person against whom the same shall be made, without service of process upon him as aforesaid, his heirs, executors, or administrators for or in respect of any estate, right, or interest which such person shall have at the time of making such decree for his own use or benefit, or otherwise than as a trustee as aforesaid.†

Orders under Act chargeable with same stamp-duty as deeds of conveyance.

48. Every order to be made under this Act, which shall have the effect of a conveyance of any immoveable property, or a transfer of any such stock, Government securities, or thing in action as can only be transferred by stamped deed, or for the transfer of which a stamp is necessary, shall be chargeable with the like amount of stamp-duty as it would have been chargeable with if it had been a deed executed, or a transfer made, by the person or persons holding such property or entitled to such stock, Government securities, or thing in action.

Every such order shall be duly stamped for denoting the payment of the said duty.‡

Costs may be paid out of estate.

49. The High Court may order the costs and expenses of and relating to the petitions, orders, directions, conveyances, and transfers to be made in pursuance of this Act, or any of them, to be paid and raised out of or from the immoveable or moveable property, or the rents or produce thereof, in respect of which the same respectively shall be made, or in such manner as the said Court shall think proper.§

Power to order enquiry concerning person of unsound mind.

50. Upon any petition being presented under this Act to the High Court concerning a person of unsound mind, it shall be lawful for the said Court to make an order directing an enquiry whether such person is or is not of unsound mind, and incapable of managing himself and his affairs.

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* Compare 13 & 14 Vic., c. 60, s. 47.
† Compare 13 & 14 Vic., c. 60, s. 49.
‡ Compare 15 & 16 Vic., c. 55, s. 13.
§ Compare 13 & 14 Vic., c. 60, s. 51.

Act XXVII. of 1866.

Such order shall have the same effect as the like order made under section 1 of Act XXXIV. of 1858 (*to regulate proceedings in Lunacy in the Courts of Judicature established by Royal Charter*), and the enquiry directed to be made shall be made in all respects in the manner declared and prescribed for making an enquiry under the last-mentioned Act.

Effect of order.

The High Court may postpone making any order upon the petition presented as aforesaid, until any enquiry so directed to be made shall have been finally concluded.*

Postponement of order pending enquiry.

51. Upon any petition under this Act being presented to the High Court, it shall be lawful for the said Court to postpone making any order upon such petition, until the right of the petitioner shall have been declared in a suit duly instituted for that purpose.†

Suit may be directed.

52. Every order made or purporting to be made under this Act by the High Court shall be a complete indemnity to all persons whatsoever for any act done pursuant thereto; and it shall not be necessary for such persons to enquire concerning the propriety of such order, or whether the High Court has jurisdiction to make the same.‡

Indemnity to persons obeying orders under Act.

53. Any order made by the High Court under this Act shall have the same effect, and be executed in the same manner, as a decree.

Execution and effect of orders.

54. This Act may be cited as "The Indian Trustee Act, 1866."

Short title.

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* Compare 13 & 14 Vic., c. 60, s. 52.
† Compare 13 & 14 Vic., c. 60, s. 53.
‡ Compare 15 & 16 Vic., c. 55, s. 7.

ACT XXVIII. OF 1866.*

Act XXVIII. of 1866.

RECEIVED THE G.-G.'s ASSENT ON THE 24TH OCTOBER 1866.

An Act to give Trustees, Mortgagees, and others, in cases to which English Law is applicable, certain powers now commonly inserted in Settlements, Mortgages, and Wills, and to amend the Law of property, and relieve Trustees.

WHEREAS it is expedient that, in cases to which English law is applicable, certain powers and provisions usually inserted in settlements, mortgages, wills, and other instruments, should be made incident to the estates of the persons interested, so as to dispense with the necessity of inserting the same in terms in every such instrument, and that in such cases trustees should be relieved; It is enacted as follows:—

Preamble.

Interpretation-clause.

1. In the construction of this Act, unless there be something repugnant in the subject or context,—

"Immoveable property" shall include land, any benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth:

"Mortgage" shall be taken to include every instrument by virtue whereof immoveable property is in any manner conveyed, pledged, or charged as security for the repayment of money or money's worth lent, and to be re-conveyed or released on satisfaction of the debt:

"Mortgagor" shall be taken to include every person by whom any such conveyance, pledge, or charge as aforesaid shall be made:

"Mortgagee" shall be taken to include every person to whom or in whose favour any such conveyance, pledge, or charge as aforesaid is made or transferred: and

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* Act XXVIII. has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent (Act XV. of 1874), s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

West Jalpáiguri, the Western Hills of Dárjiling, the Dárjiling Tarái, and the Damson Subdivision of the Dárjiling District	See	*Gazette of India*. Mar. 5, 1881, Pt. I., p. 74.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	. Oct. 22, 1881, Pt. I., p. 504.
The Jhánsí Division	Ditto	. Aug. 31, 1878, Pt. I., p. 546.
The scheduled portion of the Mirzápur District . . .	Ditto	. May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	. May 31, 1879, Pt. I., p. 382.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán	Ditto	. Jan. 30, 1886, Pt. I., p. 48.
The District of Silhat . . .	Ditto	. Oct. 4, 1879, Pt. I., p. 631.

It has been extended, under the same Act, to the Scheduled Districts of Kumáon and Garhwál.—See *Gazette of India*, November 4, 1876, Pt. I., p. 606.

It has been declared, under the same Act, not to be in force in the Scheduled District of Lahaul.—See *Gazette of India*, May 1, 1886, Pt. I., p. 301.

This Act is founded on 22 & 23 Vic., c. 35, and 23 & 24 Vic., c. 145.

Act XXVIII. of 1866.

"High Court" means any Court established or to be established under Statute 24 & 25 Vic., cap. 104, and includes the Chief Court of the Panjáb.

Powers of Trustees for Sale, &c., and Trustees of renewable Leaseholds.

Trustees empowered to sell may sell in lots, and either by public auction or private contract.

2. In all cases where, by any will, deed, or other instrument of settlement, it is expressly declared that trustees or other persons therein named or indicated shall have a power of sale, either generally or in any particular event, over any immoveable property named or referred to in, or from time to time subject to the uses or trusts of, such will, deed, or other instrument, it shall be lawful for such trustees or other persons, whether such property be vested in them or not, to exercise such power of sale by selling such property either together or in lots, and either by public auction or private contract, and either at one time or at several times.*

Sale may be made under special conditions, and trustees may buy in, &c.

3. It shall be lawful for the persons making any such sale to insert any such special or other stipulations, either as to title or evidence of title, or otherwise, in any conditions of sale, or contract for sale, as they shall think fit; and also to buy in the property or any part thereof at any sale by auction, and to rescind or vary any contract for sale, and to resell the propery which shall be so bought in, or as to which the contract shall be so rescinded, without being responsible for any loss which may be occasioned thereby:

and no purchaser under any such sale shall be bound to enquire whether the persons making the same may or may not have in contemplation any particular re-investment of the purchase-money in the purchase of any other property or otherwise.†

Trustees exercising power of sale, &c., empowered to convey.

4. For the purpose of completing any such sale as aforesaid, the persons empowered to sell as aforesaid shall have full power to convey or otherwise dispose of the property in question in such manner as may be necessary.‡

Money arising from sales to be laid out in manner indicated in will, &c.

5. The money so received upon any such sale as aforesaid shall be laid out in the manner indicated in that behalf in the will, deed, or instrument containing the power of sale;

Until so laid out, money to be invested in Government securities.

and, until the money to be received upon any sale as aforesaid shall be so disposed of, the same shall be invested at interest in Government securities for the benefit of such persons as would be entitled to the benefit of the money, and the interest and profits thereof, in case such money were then actually laid out as aforesaid:

Provided that, if the will, deed, or instrument shall contain no such indication, the persons empowered to sell as aforesaid shall invest the money so received upon any such sale in their names upon Government securities in India, and the interest of such securities shall be paid and applied to such person or persons for such purposes and in such manner as the rents and profits of the property sold as aforesaid, would have been payable or applicable in case such sale had not been made.§

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* Compare 23 & 24 Vic., c. 145, s. 1.
† Compare 23 & 24 Vic., c. 145, s. 2.
‡ Compare 23 & 24 Vic., c. 145, s. 3.
§ Compare 23 & 24 Vic., c. 145, s. 4.

Powers of Mortgagee.

Powers incident to mortgagee.

6. Where any principal-money is secured or charged by deed on any immoveable property, or on any interest therein, the person to whom such money shall for the time being be payable, his executors, administrators, and assigns, shall, at any time after the expiration of one year from the time when such principal-money shall have become payable, according to the terms of the deed, or after any interest on such principal-money shall have been in arrear for six months, or after any omission to pay any premium on any insurance which by the terms of the deed ought to be paid by the person entitled to the property subject to the charge, have the following powers to the same extent (but no more) as if they had been in terms conferred by the person creating the charge, namely:—

1st, a power to sell, or concur with any other person in selling, the whole or any part of the property by public auction or private contract, subject to any reasonable conditions he may think fit to make and to rescind or vary contracts for sale, or buy in and resell the property, from time to time, in like manner:

2nd, a power to appoint or obtain the appointment of a receiver of the rents and profits of the whole or any part of the property in manner hereinafter mentioned.*

Receipts for purchase-money sufficient discharges.

7. Receipts for purchase-money given by the person or persons exercising the power of sale hereby conferred shall be sufficient discharges to the purchasers, who shall not be bound to see to the application of such purchase-money.†

Notice to be given before sale;

8. No such sale as last aforesaid shall be made until after six months' notice in writing given to the person or one of the persons entitled to the property subject to the charge or affixed on some conspicuous part of such property;

but purchaser relieved from inquiry as to circumstances of sale.

but, when a sale has been effected in professed exercise of the powers hereby conferred, the title of the purchaser shall not be liable to be impeached on the ground that no case had arisen to authorize the exercise of such power, or that no such notice as aforesaid had been given; but any person damnified by any such unauthorized exercise of such power shall have his remedy in damages against the person or persons selling.‡

Application of purchase-money.

9. The money arising by any sale effected as aforesaid shall be applied by the person receiving the same as follows:—

first, in payment of all the expenses incident to the sale or incurred in any attempted sale;

secondly, in discharge of all interest and costs then due in respect of the charge in consequence whereof the sale was made; and

thirdly, in discharge of all the principal-moneys then due in respect of such charge;

and the residue of such money shall be paid to the person entitled to the property subject to the charge, his executors, administrators, or assigns, as the case may be.§

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* Compare 23 & 24 Vic., c. 145, s. 11.
† Compare 23 & 24 Vic., c. 145, s. 12.
‡ Compare 23 & 24 Vic., c. 145, s. 13.
§ Compare 23 & 24 Vic., c. 145, s. 14.

Act XXVIII. of 1866.

Conveyance to purchaser.

10. The person exercising the power of sale hereby conferred shall have power by deed to convey or assign to and vest in the purchaser the property sold, for all the estate and interest therein which the person who created the charge had power to dispose of:

Provided that nothing herein contained shall be construed to authorize the mortgagee of a term of years to sell and convey the fee simple of the property comprised therein in cases where the mortgagor could have disposed of such fee simple at the date of the mortgage.*

Owner of charge may call for title-deeds and conveyance of legal estate.

11. At any time after the power of sale hereby conferred shall have become exerciseable, the person entitled to exercise the same shall be entitled to demand and recover from the person entitled to the property subject to the charge, all the deeds and documents in his possession or power relating to the same property, or to the title thereto, which he would have been entitled to demand and recover if the same property had been conveyed, appointed, or surrendered to and were then vested in him for all the estate and interest which the person creating the charge had power to dispose of;

and where the legal estate shall be outstanding in a trustee, the person entitled to a charge created by a person equitably entitled, or any purchaser from such person, shall be entitled to call for a conveyance of the legal estate to the same extent as the person creating the charge could have called for such a conveyance if the charge had not been made.†

Appointment of receiver.

12. Any person entitled to appoint or obtain the appointment of a receiver as aforesaid may from time to time, if any person or persons has or have been named in the deed of charge for that purpose, appoint such person or any one of such persons to be receiver, or if no person be so named, then may, by writing delivered to the person or any one of the persons entitled to the property subject to the charge, or affixed on some conspicuous part of the property, require such last-mentioned person or persons to appoint a fit and proper person as receiver, and if no such appointment be made within ten days after such requisition, then may in writing appoint any person he may think fit.‡

No person shall be ineligible for the office of receiver merely because he is an officer of the High Court.

Receiver deemed agent of mortgagor.

13. Every receiver appointed as aforesaid shall be deemed to be the agent of the person entitled to the property subject to the charge, who shall be solely responsible for his acts or defaults, unless otherwise provided for in the charge.§

Powers of receiver.

14. Every receiver appointed as aforesaid shall have power to demand and recover and give effectual receipts for all the rents, issues, and profits of the property of which he is appointed receiver, by suit, distress, or otherwise, in the name either of the person entitled to the property subject to the charge, or of the person entitled to the money secured by the charge, to the full extent of the estate or interest which the person who created the charge had power to dispose of.‖

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* Compare 23 & 24 Vic., c. 145, s. 15.
† Compare 23 & 24 Vic., c. 145, s. 16.
‡ Compare 23 & 24 Vic., c. 145, s. 17.
§ Compare 23 & 24 Vic., c. 145, s. 18.
‖ Compare 23 & 24 Vic., c. 145, s. 19.

15. Every receiver appointed as aforesaid may be removed by the like authority, or on the like requisition as before provided with respect to the original appointment of a receiver, and new receivers may be appointed from time to time.*

Receiver may be removed, and new receivers appointed.

16. Every receiver appointed as aforesaid shall be entitled to retain out of any money received by him, in lieu of all costs, charges, and expenses whatsoever, such a commission, not exceeding five *per centum* on the gross amount of all money received, as shall be specified in his appointment, and if no amount shall be so specified, then five *per centum* on such gross amount.†

Receiver to receive commission not exceeding five per cent.

17. Every receiver appointed as aforesaid shall, if so directed in writing by the person entitled to the money secured by the charge, insure and keep insured from loss or damage by fire out of the money received by him the whole or any part of the property included in the charge which is in its nature insurable.‡

Receiver to insure if required.

18. Every receiver appointed as aforesaid shall pay and apply all the money received by him in the first place in discharge of Government revenue, and of all taxes, rates, and assessments whatsoever, and in payment of his commission as aforesaid, and of the premiums on the insurances, if any; and in the next place in payment of all the interest accruing due in respect of any principal-money then charged on the property over which he is receiver, or on any part thereof; and, subject as aforesaid, shall pay all the residue of such money to the person for the time being entitled to the property subject to the charge, his executors, administrators, or assigns.§

Application of moneys received by him.

19. The powers and provisions contained in sections 6 to 18 of this Act, both inclusive, relate only to mortgages or charges made to secure money advanced or to be advanced by way of loan, or to secure an existing or future debt.‖

This Part to relate to charges by way of mortgage only.

Leases.

20. Where any license to do any act which, without such license, would create a forfeiture, or give a right to re-enter, under a condition or power reserved in any lease heretofore granted, or to be hereafter granted, shall, at any time after this Act comes into operation, be given to any lessee or his assigns, every such license shall, unless otherwise expressed, extend only to the permission actually given, or to any specific breach of any proviso or covenant made or to be made, or to the actual assignment, under-lease, or other matter thereby specifically authorized to be done, but not so as to prevent any proceeding for any subsequent breach (unless otherwise specified in such license);

Restriction on effect of license to alien.

and all rights under covenants and powers of forfeiture and re-entry in the lease contained shall remain in full force, and shall be available as against any subsequent breach of covenant or condition, assignment, under-lease, or other

* Compare 23 & 24 Vic., c. 145, s. 20.
† Compare 23 & 24 Vic., c. 145, s. 21.
‡ Compare 23 & 24 Vic., c. 145, s. 22.
§ Compare 23 & 24 Vic., c. 145, s. 23.
‖ Compare 23 & 24 Vic., c. 145, s. 24.

Act XXVIII. of 1866.

matter not specifically authorized or made dispunishable by such license, in the same manner as if no such license had been given; and the condition or right of re-entry shall be and remain in all respects as if such license had not been given, except in respect of the particular matter authorized to be done.*

Restricted operation of partial licenses.

21. Where in any lease heretofore granted or to be hereafter granted there is or shall be a power or condition of re-entry on assigning or under-letting, or doing any other specified act without license, and a license at any time after the passing of this Act shall be given to one of several lessees or co-owners to assign or under-let his share or interest, or to do any other act prohibited to be done without license; or shall be given to any lessee or owner, or any one of several lessees or owners, to assign or under-let part only of the property, or to do any other such act as aforesaid in respect of part only of such property, such license shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by the co-lessee or co-lessees, or owner or owners, of the other shares or interests in the property, or by the lessee or owner of the rest of the property (as the case may be) over or in respect of such shares or interests or remaining property, but such right of re-entry shall remain in full force over or in respect of the shares or interests or property not the subject for such license.†

Apportionment of conditions of re-entry in certain cases.

22. Where the reversion upon a lease is reserved, and the rent or other reservation is legally apportioned, the assignee of each part of the reversion shall, in respect of the apportioned rent or other reservation allotted or belonging to him, have and be entitled to the benefit of all conditions or powers of re-entry for non-payment of the original rent or other reservation, in like manner as if such conditions or powers had been reserved to him as incident to his part of the reversion in respect of the apportioned rent or other reservation allotted or belonging to him.‡

Rent-charges.

Release of part of land charged, not an extinguishment.

23. The release from a rent-charge of part of the immoveable property charged therewith shall not extinguish the whole rent-charge, but shall operate only to bar the right to recover any part of the rent-charge out of the property released, without prejudice, nevertheless, to the rights of all persons interested in the property remaining unreleased and not concurring in or confirming the release.§

Powers.

Mode of execution of powers.

24. A deed hereafter executed in the presence of and attested by two or more witnesses in the manner in which deeds are ordinarily executed and attested shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by deed or by any instrument in writing not testamentary, notwithstanding it shall have been expressly required that a deed or instrument in writing made in exercise of such power should be executed or attested with some additional or other form of execution or attestation or solemnity:

Provided always that this provision shall not operate to defeat any direction in the instrument creating the power, that the consent of any particular

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* Compare 23 & 24 Vic., c. 35, s. 1.
† Compare 23 & 24 Vic., c. 35, s. 2.
‡ Compare 22 & 23 Vic., c. 35, s. 3.
§ Compare 22 & 23 Vic., c. 35, s. 10.

person shall be necessary to a valid execution, or that any act shall be performed in order to give validity to any appointment, having no relation to the mode of executing and attesting the instrument:

and nothing herein contained shall prevent the donee of a power from executing it conformably to the power by writing or otherwise than by an instrument executed and attested as an ordinary deed, and to any such execution of a power this provision shall not extend.*

Legatee in trust may raise money by sale, notwithstanding want of express power in will.

25. Where, by any will which shall come into operation after the passing of this Act, the testator shall have charged his immoveable property, or any specific portion thereof, with the payment of his debts, or with the payment of any legacy or other specific sum of money, and shall have bequeathed the property so charged to any trustee or trustees for the whole of his estate or interest therein, and shall not have made any express provision for the raising of such debt, legacy, or sum of money out of such property, it shall be lawful for the said legatee or legatees in trust, notwithstanding any trusts actually declared by the testator, to raise such debts, legacy, or money as aforesaid by sale and absolute disposition by public auction or private contract, of the said property or any part thereof, or by a mortgage of the same, or partly in one mode and partly in the other;

and any deed or deeds of mortgage so executed may reserve such rate of interest and fix such period or periods of repayment as the person or persons executing the same shall think proper.†

Powers given by last section extended to survivors, legatees, &c.

26. The powers conferred by the last preceding section shall extend to all and every person or persons in whom the property bequeathed in trust shall for the time being be vested by survivorship, or under the laws relating to intestate or testamentary succession, or to any person or persons who may be appointed under any power in the will, or by the High Court, to succeed to the trusteeship vested in such legatee or legatees in trust as aforesaid.‡

Executors to have power of raising money, &c., where no sufficient bequest.

27. If any testator who shall have created such a charge as is described in section 25 of this Act shall not have bequeathed the property charged as aforesaid in such terms as that his whole estate and interest therein shall become vested in any trustee or trustees, the executor or executors (if any) for the time being named in such will shall have the same or the like power of raising the said moneys as is hereinbefore vested in the legatee or legatees in trust of the said property, and such power shall from time to time devolve on, and become vested in, the person or persons (if any) in whom the executorship shall for the time being be vested.§

Purchasers, &c., not bound to enquire as to powers.

28. Purchasers or mortgagees shall not be bound to enquire whether the powers conferred by sections 25, 26, and 27 of this Act, or any of them, shall have been duly and correctly exercised by the person or persons acting in virtue thereof.‖

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* Compare 22 & 23 Vic., c. 35, s. 12.
† Compare 22 & 23 Vic., c. 35, s. 14.
‡ Compare 22 & 23 Vic., c. 35, s. 15.
§ Compare 22 & 23 Vic., c. 35, s. 16.
‖ Compare 22 & 23 Vic., c. 35, s. 17.

Act XXVIII. of 1866.

Inheritance.

29. In cases of intestacies occurring before the first day of January 1866, where there shall be a total failure of heirs of the purchaser, or where any immoveable property shall be descendible as if an ancestor had been the purchaser thereof, and there shall be a total failure of the heirs of such ancestor, then and in every such case the property shall descend, and the descent shall thenceforth be traced, from the person last entitled to the property as if he had been the purchaser thereof.*

Descent how traced.

This section shall be read as part of Act No. XXX. of 1839† (*for the amendment of the law of inheritance*).‡

Assignment of Moveables and Terms for years.

30. Any person shall have power to assign moveable property now by law assignable, terms for years of immoveable property, and estates by *elegit*, directly to himself and another person or other persons or corporation, by the like means as he might assign the same to another. §

Assignment to self and others.

Purchasers.

31. The *bonâ-fide* payment to and the receipt of any person to whom any purchase or mortgage-money shall be payable upon any express or implied trust shall effectually discharge the person paying the same from seeing to the application, or being answerable for the misapplication thereof.‖

Not bound to see to application of purchase-money, &c.

Investment of Trust-funds.

32. Trustees having trust-money in their hands, which it is their duty to invest at interest, shall be at liberty, at their discretion, to invest the same in any Government securities, and such trustees shall also be at liberty, at their discretion, to call in any trust-funds invested in any other securities than as aforesaid, and to invest the same on any such securities as aforesaid, and also from time to time, at their discretion, to vary any such investments as aforesaid for others of the same nature:

On what securities trust funds may be invested.

Provided always that no such original investment as aforesaid, and no such change of investment as aforesaid, shall be made where there is a person under no disability entitled in possession to receive the income of the trust-fund for his life, or for a term of years determinable with his life, or for any greater estate, without the consent in writing of such person.¶

Trustees and Executors.

33. In all cases where any property is held by trustees in trust for a minor, either absolutely or contingently on his attaining majority, or on the occurrence of any event previously to his attaining majority, it shall be lawful

Trustees may apply income of property of minors, &c., for their maintenance.

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* Compare 22 & 23 Vic., c. 35, s. 19.

† Repealed, except as to descents before 1866, by Act No. VIII. of 1868.

‡ Compare 22 & 23 Vic., c. 35, s. 20.

§ Compare 22 & 23 Vic., c. 35, s. 21.

‖ Compare 22 & 23 Vic., c. 35, s. 23, omitting the limiting clause, "unless the contrary shall be expressly declared by the instrument creating the trust or security."

¶ Compare 23 & 24 Vic., c. 145, s. 25.

for such trustees, at their sole discretion, to pay to the guardians (if any) of such minor, or otherwise to apply for or towards the maintenance or education of such minor, the whole or any part of the income to which such minor may be entitled in respect of such property whether there be any other fund applicable to the same purpose, or any other person bound by law to provide for such maintenance or education or not ;

and such trustees shall accumulate all the residue of such income by way of compound interest, by investing the same and the resulting income thereof from time to time, in proper securities, for the benefit of the person who shall ultimately become entitled to the property from which such accumulations shall have arisen :

Provided always that it shall be lawful for such trustees at any time, if it shall appear to them expedient, to apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.*

Provisions for appointment of new trustees, on death, &c.

34. Whenever any trustee, either original or substituted, and whether appointed by any High Court or otherwise, shall die, or be six months absent from British India, or desire to be discharged from, or refuse, or become unfit or incapable, to act in the trusts or powers in him reposed, before the same shall have been fully discharged and performed, it shall be lawful for the person or persons nominated for that purpose by the deed, will, or other instrument creating the trust (if any), or if there be no such person, or no such person able and willing to act, then for the surviving or continuing trustees or trustee for the time being, or the acting executors or executor, or administrators or administrator, of the last surviving and continuing trustee, or for the retiring trustees, if they shall all retire simultaneously, or for the last retiring trustee, or where there are two or more classes of trustees of the instrument creating the trust, then for the surviving or continuing trustees or trustee of the class in which any such vacancy or disqualification shall occur (and for this purpose any refusing or retiring trustee shall, if willing to act in the execution of the power, be considered a continuing trustee), by writing to appoint any other person or persons to be a trustee or trustees in the place of the trustee or trustees so dying, or being absent from British India, or desiring to be discharged, or refusing or becoming unfit or incapable to act as aforesaid.

Transfer of trust-property to new trustees.

So often as any new trustee or trustees shall be so appointed as aforesaid, all the trust-property (if any), which for the time being shall be vested in the surviving or continuing trustees or trustee, or in the heirs, executors, or administrators of any trustee, shall with all convenient speed be conveyed and transferred so that the same may be legally and effectually vested in such new trustee or trustees, either solely or jointly with the surviving or continuing trustees or trustee as the case may require.

Powers, &c., of new trustees.

Every new trustee to be appointed as aforesaid, as well before as after such conveyance or transfer as aforesaid, and also every trustee appointed by any High Court, either before or after the passing of this Act, shall have the same powers, authorities, and discretions, and shall in all respects act as if he had been originally nominated a trustee by the deed, will, or other instrument (if any) creating the trust.†

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* Compare 23 & 24 Vic., c. 145, s. 26. † Compare 23 & 24 Vic., c. 145, s. 27.

Act XXVIII. of 1866.

Appointment of Official Trustee to be a trustee.

The Official Trustee may with his consent, and by the order of the High Court, be appointed under this section in any case in which only one trustee is to be appointed, and such trustee is to be the sole trustee.

Appointment in place of trustee predeceasing testator.

35. The power of appointing new trustees hereinbefore contained may be exercised in cases where a trustee nominated in a will has died in the lifetime of the testator.*

Trustees' receipts to be discharges.

36. The receipts in writing of any trustees or trustee for any money payable to them or him by reason, or in the exercise, of any trusts or powers reposed or vested in them or him, shall be sufficient discharges for the money therein expressed to be received, and shall effectually exonerate the persons paying such money from seeing to the application thereof, or from being answerable for any loss or misapplication thereof.†

Every trust-instrument deemed to contain clauses for indemnity and reimbursement of trustees.

37. Every deed, will, or other instrument creating a trust, either expressly or by implication, shall, without prejudice to the clauses actually contained therein, be deemed to contain a clause in the words or to the effect following, that is to say:

"that the trustees or trustee for the time being of the said deed, will, or other instrument, shall be respectively chargeable only for such moneys, stocks, funds, and securities as they shall respectively actually receive, notwithstanding their respectively signing any receipt for the sake of conformity, and shall be answerable and accountable only for their own acts, receipts, neglects, or defaults, and not for those of each other, nor for any banker, broker, or other person with whom any trust-moneys or securities may be deposited, nor for the insufficiency or deficiency of any stocks, funds, or securities, nor for any other loss, unless the same shall happen through their own wilful default respectively; and also that it shall be lawful for the trustees or trustee for the time being of the said deed, will, or other instrument, to reimburse themselves or himself, or pay or discharge out of the trust-premises all expenses incurred in or about the execution of the trusts or powers of the said deed, will, or other instrument."‡

Executors may compound, &c.

38. It shall be lawful for any executors to pay any debts or claims upon any evidence that they may think sufficient, and to accept any composition, or any security for any debts due to the deceased, and to allow any time for payment of any such debts as they shall think fit, and also to compromise, compound, or submit to arbitration all debts, accounts, claims, and things whatsoever relating to the estate of the deceased, and for any of the purposes aforesaid to enter into, give, and execute such agreements, instruments of composition, releases, and other things as they shall think expedient, without being responsible for any loss to be occasioned thereby.§

Trustee, &c., making payment under power-of-attorney, not liable by reason of death of party giving power.

39. No trustee, executor, or administrator making any payment or doing any act, *bonâ fide*, under or in pursuance of any power-of-attorney, shall be liable for the moneys so paid or the act so done, by reason that the person who gave the power-of-attorney was dead at the time of such payment or act, or had done some act to avoid the power:

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* Compare 23 & 24 Vic., c. 145, s. 28.
† Compare 23 & 24 Vic., c. 145, s. 29.
‡ Compare 22 & 23 Vic., c. 35, s. 31.
§ Compare 23 & 24 Vic., c. 145, s. 30.

Provided that the fact of the death, or of the doing of such act as last aforesaid, at the time of such payment or act *bonâ fide* done as aforesaid by such trustee, executor, or administrator, was not known to him :

Provided always that nothing herein contained shall in any manner affect or prejudice the right of any person entitled to the money against the person to whom such payment shall have been made; but that such person so entitled shall have the same remedy against such person to whom such payment shall be made as he would have had against the trustee, executor, or administrator, if the money had not been paid away under such power-of-attorney.*

As to liability of executor or administrator in respect of rents, covenants, or agreements.

40. Where an executor or administrator liable as such to the rents, covenants, or agreements contained in any lease or agreement for a lease granted or assigned, whether before or after the passing of this Act, to the testator or intestate whose estate is being administered, shall have satisfied all such liabilities under the said lease, or agreement for a lease, as may have accrued due and been claimed up to the time of the assignment hereinafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee to be laid out on the property demised or agreed to be demised, although the period for laying out the same may not have arrived, and shall have assigned the lease or agreement for a lease to a purchaser thereof, he shall be at liberty to distribute the residuary estate of the deceased to and amongst the parties entitled thereto, respectively, without appropriating any part, or any further part (as the case may be), of the estate of the deceased to meet any future liability under the said lease or agreement for a lease.

The executor or administrator so distributing the residuary estate shall not, after having assigned the said lease or agreement for a lease, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said lease or agreement for a lease.

Nothing herein contained shall prejudice the right of the lessor or those claiming under him to follow the assets of the deceased into the hands of the person or persons to or amongst whom the said assets may have been distributed.†

As to liability of executor, &c., in respect of rents, &c., in conveyance on rent-charge.

41. In like manner, where an executor or administrator liable as such to the rent, covenants, or agreements contained in any conveyance on chief rent or rent-charge (whether any such rent be by limitation of use, grant, or reservation), or agreement for such conveyance, granted or assigned to or made and entered into with the testator or intestate whose estate is being administered, shall have satisfied all such liabilities under the said conveyance or agreement for a conveyance, as may have accrued due and been claimed up to the time of the conveyance hereinafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the grantee to be laid out on the property conveyed, or agreed to be conveyed, although the period for laying out the same may not have arrived, and shall have conveyed such property, or assigned the said agreement for such convey-

* Compare 22 & 23 Vic., c. 35, s. 26. † Compare 22 & 23 Vic., c. 35, s. 27.

Act XXVIII. of 1866.

ance as aforesaid, to a purchaser thereof, he shall be at liberty to distribute the residuary estate of the deceased to and amongst the parties entitled thereto, respectively without appropriating any part or any further part (as the case may be) of such estate to meet any future liability under the said conveyance or agreement for a conveyance.

The executor or administrator so distributing the residuary estate shall not, after having made or executed such conveyance or assignment, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said conveyance or agreement for conveyance.

Nothing herein contained shall prejudice the right of the grantor, or those claiming under him, to follow the assets of the deceased into the hands of the person or persons to or among whom the said assets may have been distributed.*

As to distribution of assets of testator or intestate after notice given by executor and administrator.

42. Where an executor or administrator shall have given such or the like notices as in the opinion of the Court in which such executor or administrator is sought to be charged would have been given by the High Court in an administration-suit, for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, such executor or administrator shall, at the expiration of the time named in the said notices, or the last of the said notices, for sending in such claims, be at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets or any part thereof so distributed to any person of whose claim such executor or administrator shall not have had notice at the time of distribution of the said assets, or a part thereof as the case may be.

Nothing in the present Act contained shall prejudice the right of any creditor or claimant to follow the assets or any part thereof into the hands of the person or persons who may have received the same respectively.†

Trustee, executor, &c., may apply by petition to Judge of High Court for opinion, advice, &c., in management, &c., of trust-property.

43. Any trustee, executor, or administrator shall be at liberty, without the institution of a suit, to apply by petition to any Judge of the High Court for the opinion, advice, or direction of such Judge on any question respecting the management or administration of the trust-property or the assets of any testator or intestate.

Such application shall be served upon, or the hearing thereof shall be attended by, all persons interested in such application, or such of them as the said Judge shall think expedient.

The trustee, executor, or administrator acting upon the opinion, advice or direction given by the said Judge, shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, executor, or administrator in the subject-matter of the said application :

Provided, nevertheless, that this Act shall not extend to indemnify any trustee, executor, or administrator, in respect of any act done in accordance with such opinion, advice, or direction as aforesaid, if such trustee, executor, or administrator shall have been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice, or direction ; and the costs

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* Compare 22 & 23 Vic., c. 35, s. 28. † Compare 22 & 23 Vic., c. 35, s. 29.

of such application as aforesaid shall be in the discretion of the Judge to whom the said application shall be made.* Act I. of 1867.

General Provisions.

44. For the purposes of this Act, a person shall be deemed to be entitled to the possession or to the receipt of the rents and income or immoveable or moveable property, although his estate may be charged or incumbered, either by himself or by any former owner, or otherwise howsoever to any extent, but the estates or interests of the parties entitled to any such charge or incumbrance shall not be affected by the acts of the person entitled to the possession or to the receipt of the rents and income as aforesaid, unless they shall concur therein.† Tenants for life, &c., may execute powers, notwithstanding incumbrances.

45. The provisions contained in this Act shall, except as hereinbefore otherwise provided, extend only to persons entitled or acting under a deed, will, codicil, or other instrument executed after this Act comes into operation, or under a will or codicil confirmed or revived by a codicil executed after that date,‡ and only to property in British India and to cases to which English law is applicable. Operation of Act.

46. This Act may be called "The Trustees' and Mortgagees' Powers Act, 1866." Short title.

ACT I. OF 1867.

RECEIVED THE G.-G.'S ASSENT ON THE 18TH JANUARY 1867.

An Act to authorize the levy of tolls for the improvement of the navigation of the Ganges.

WHEREAS it is expedient to authorize the levy of tolls on certain steamers, flats, and boats plying on the river Ganges, to be applied for the improvement of the navigation of the said river between Allahabad and Dinapore; It is hereby enacted as follows:— Preamble.

1. In construing this Act— Interpretation-clause.

"Lieutenant-Governor" shall mean the Lieutenant-Governor of the North-Western Provinces of the Presidency of Fort William;

"Master" shall include every person (except a pilot) having command or charge of any steamer, flat, or boat; and

"Magistrate" shall include any person exercising any of the powers of a Magistrate.

2. A toll not exceeding twelve annas per hundred maunds shall be payable, at such place or at one of such places subject to the government of the Lieutenant-Governor as he shall from time to time direct, in respect of every steamer, flat, and boat of the burden of two hundred maunds and upwards, which shall pass up or down the Ganges by such place or any one of such places: Toll not exceeding 12 annas per 100 maunds chargeable on vessels ascending or descending Ganges.

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* Compare 22 & 23 Vic., c. 35, s. 30. † Compare 23 & 24 Vic., c. 145, s. 31.
‡ Compare 23 & 24 Vic., c. 145, s. 34.

Act I. of 1867.

Provided that toll shall be levied in the case of steamers only on sixty-five per cent. of the burden, and in the case of flats only on ninety per cent. of the burden.

Rules for measurement of burden.

3. The burden of steamers and flats liable to pay tolls under this Act shall be determined according to the method which may from time to time be practised by the Master Attendant at Calcutta in order to ascertain the amount of port-dues which such steamers and flats would be liable to pay on arriving within the limits of the port of Calcutta.

The following method shall be used for determining in maunds, according to actual floatage or displacement, the burden of boats liable to pay tolls under this Act; (that is to say), half the length in feet at the water-level of the boat shall be multiplied by the greatest width in feet at the water-level, and the product shall further be multiplied by the draft of water in feet, and the number so found shall be taken to be the burden in maunds.

Thereupon the toll shall be calculated according to the even hundreds of maunds, fractions of a hundred being neglected.

Application of funds raised under Act.

4. The funds raised by the tolls payable under this Act shall be applicable, at the discretion of the Lieutenant-Governor, to defray the expenses of improving and facilitating the navigation of the Ganges between Allahabad and Dinapore.

Appointment of Collector of tolls.

5. The Lieutenant-Governor may appoint any person he may think fit to collect the tolls payable under this Act at any place or places under his government, and may from time to time remove any such person and appoint another person in his stead.

List of tolls.

6. Sections 2 and 3 of this Act, and a list of the rates of toll and of the place or places of collecting the toll leviable under this Act, shall be at all times exhibited at such place or places in the English and Urdu languages, and shall also be published thrice in the local Gazette.

Person to collect tolls, and receiver to give voucher for same.

7. Every person so appointed shall collect the tolls leviable under this Act by himself, or by any officer in his establishment (if any) whom he shall appoint in this behalf.

The officer to whom any such toll shall be paid shall grant to the person paying the same a voucher in writing under his hand, describing the name of his office and the place at which such payment shall be made, the name (if any), burden, and other proper description of the steamer, flat, or boat, and the voyage in respect of which such toll shall be paid.

Payment of tolls how enforced.

8. If any toll leviable under this Act in respect of any steamer, flat, or boat shall not be paid on demand to the person authorized to collect the same, it shall be lawful for such person to seize such steamer, flat, or boat, and any furniture thereof, and to detain the same; and such person shall, within twenty-four hours of such seizure and detention, report the same to the nearest Collector or Deputy Collector of the district in which the seizure has been made, or other public officer duly authorized by the Lieutenant-Governor in this behalf.

On receipt of such report, the Collector, Deputy Collector, or other officer as aforesaid, shall publish a notice appointing a day for the sale of the said steamer, flat, or boat, and any furniture thereof.

The sale shall be held at some period not less than fifteen days from the date of the publication of notice of sale.

If the toll and also any expenses occasioned by non-payment be not paid, or sufficient cause for non-payment be not shown, at or before the time of sale to the Collector, Deputy Collector, or other officer as aforesaid, such officer shall sell the steamer, flat, or boat, and furniture seized, or so much thereof as may be necessary to pay the toll, and also any expenses occasioned by non-payment.

So much of the property seized as may not have been sold, and so much of the sale-proceeds as may be in excess of the sum necessary for satisfying the toll and for defraying the expenses occasioned by non-payment, shall be returned to the master of the steamer, flat, or boat.

Power to sue for recovery of tolls.

9. Notwithstanding anything in this Act contained, the person authorized to collect the tolls payable under this Act at any such place as last aforesaid, may, in his own name, sue for and recover, on behalf of the Government of India, the amount of any tolls payable to him under this Act, by suit in any of the Civil Courts against the owner or master of any steamer, flat, or boat liable thereto.

Ascertainment by toll-collector of burden of steamer, flat, or boat.

10. Upon the refusal or neglect of any owner or master of any steamer, flat, or boat liable to pay toll under this Act, to satisfy the person authorized to collect such toll as to what is the true burden, as ascertained under section 3 of this Act, of the steamer, flat, or boat, it shall be lawful for such person to cause such steamer, flat, or boat to be measured at the expense of the master thereof, and such expense shall be recoverable in the same manner as tolls payable under this Act;

or it shall be lawful for such person to deliver to the master or owner of such steamer, flat, or boat, or to leave for him on board such steamer, flat, or boat, a notice in writing, specifying what, in his judgment, is the burden of the steamer, flat, or boat, and the burden specified in such notice shall be deemed to be the real burden of the steamer, flat, or boat, and be treated as such for all the purposes of this Act, until the owner or master of the steamer, flat, or boat shall give sufficient proof of the true burden thereof, as ascertained under section 3 of this Act.

Evading payment of tolls.

11. The master of any steamer, flat, or boat which shall depart from, or arrive at, any place as last aforesaid, upon, or in the course of, or at the termination of, any voyage, shall, upon demand by any person authorized to collect or receive the tolls under this Act, specify whence he is come and whither he is bound.

If any master of any such steamer, flat, or boat shall refuse, or neglect so to do, or shall make a false statement as to the place from which he is come or to which he is bound, or shall endeavour to evade the payment of any toll payable under this Act, he shall be punishable by a Magistrate by a fine not exceeding two hundred rupees.

Magistrate to decide disputes respecting tolls.

12. If any dispute shall arise respecting the liability of any steamer, flat, or boat to the payment of toll under this Act, or in respect of the burden of any steamer, flat, or boat,

Act I. of 1867.

or the amount of toll payable, or the amount of any charges on account of any sale under this Act, such dispute shall be heard and determined by a Magistrate, and the decision of such Magistrate shall be final.

Lieutenant-Governor may alter tolls.

13. The Lieutenant-Governor may, from time to time, as he may think fit, reduce all or any of the tolls payable under this Act, in respect of all vessels or of any particular class or classes of vessels, and again raise such tolls to any amount not exceeding the amount hereinbefore specified.

He may also prescribe a mode or modes of measurement for burden differing from those prescribed in section 3 of this Act; provided that the tolls payable under such new mode or modes of measurement shall not exceed the amount specified as aforesaid.

Power to prohibit construction of bándhéls.

14. Whenever, in the opinion of such officer as the Lieutenant-Governor shall appoint in this behalf, the construction of any bándhél or other contrivance for fishing or for any other purpose, in any part of the Ganges between Allahabad and Dinapore, is likely to cause obstruction to the free and safe navigation of such part, he may, by notice in writing, to be served on the owner or person in charge of such bándhél or other contrivance, or, if such owner or other person cannot be found, to be affixed at some conspicuous place in the nearest village, prohibit the construction of such bándhél or other contrivance.

Penalty for causing obstruction to navigation.

15. Any person who shall wilfully disobey any prohibition under the last preceding section, or shall wilfully cause or aid in causing any obstruction to the navigation of the Ganges between Allahabad and Dinapore, or who shall wilfully omit to remove such obstruction after being lawfully required so to do, shall be punished, on conviction before a Magistrate, with simple imprisonment which may extend to one month, or with fine which may extend to fifty rupees, or with both, and shall also be liable to pay such fine as may be sufficient to meet all reasonable expenses incurred in abating or removing such obstruction or in repairing such damage.

Rules relating to navigation.

16. It shall be lawful for the Lieutenant-Governor from time to time to make rules not repugnant to any law in force, and to repeal, alter, and amend such rules, for the management of the navigation of any part of the Ganges between Allahabad and Dinapore, and for regulating the conduct of persons employed for any of the purposes of this Act; and the Lieutenant-Governor may affix fines as penalties for the infringement of such rules, not exceeding fifty rupees for any one infringement, or five rupees a day for any continuing infringement.

Such rules may contain directions for any of the following amongst other matters:—

(*a*) for fixing the number and the width of steamers, flats, and boats to be allowed to pass into or out of or through any part of the Ganges between Allahabad and Dinapore at one time or abreast;

(*b*) for determining the length of time during which steamers, flats, or boats may remain stationary on such part, and the amount of demurrage to be paid by steamers, flats, or boats remaining stationary beyond such time;

(*c*) for regulating the mode in which, and the place or places at which, tolls are to be levied under this Act;

(*d*) for the removal of sunken vessels and obstructions;

(*e*) and for the storing and disposal of the cargo of steamers, flats, and boats seized under this Act.*

Recovery of fines.

17. All fines imposed under this Act may be recovered in the manner prescribed by the Code of Criminal Procedure, 1882,† and may be disposed of as the Lieutenant-Governor shall from time to time direct.

ACT III. OF 1867.*

RECEIVED THE G.-G.'S ASSENT ON THE 25TH JANUARY 1867.

An Act to provide for the punishment of public gambling and the keeping of common gaming-houses in the North-Western Provinces of the Presidency of Fort William, and in the Punjab, Oudh, the Central Provinces, and Lower Burma.

Preamble.

WHEREAS it is expedient to make provision for the punishment of public gambling and the keeping of common gaming-houses in the territories§ respectively subject to the governments of the Lieutenant-Governor of the North-Western Provinces of the Presidency of Fort William "and"‖ of the Lieutenant-Governor of the Punjab, and to the administrations of the Chief Commissioner of Oudh, of the Chief Commissioner of the Central Provinces, and of the Chief Commissioner of Lower Burma;§ It is hereby enacted as follows:—

Interpretation-clause.

1. In this Act—

"Lieutenant-Governor."

"Lieutenant-Governor" means the Lieutenant-Governor of the said North-Western Provinces, or the Punjab, as the case may be:

"Chief Commissioner."

"Chief Commissioner" means the Chief Commissioner of Oudh, the Central Provinces, or Lower Burma,¶ as the case may be:

"Common gaming-house."

"Common gaming-house" means any house, walled enclosure, room, or place in which cards, dice, tables, or other instruments of gaming, are kept or used for the profit or gain of the person owning, occupying, using, or keeping such house, enclosure,

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* See *North-Western Provinces Gazette*, 15th September 1869, pp. 363, 364.

† The reference to the Code of Criminal Procedure (Act XXV. of 1861) is altered in accordance with the new Code of Criminal Procedure (Act X. of 1882).

‡ Act III. of 1867 has been declared in force in Upper Burma (except the Shan States).—See Act XX. of 1886, Sch. II., Pt. I.

Taking part in the game of "*ti*" or other game of a like nature is to be deemed gaming and playing within the meaning of this Act.—See the Burma Gaming Act (XVI. of 1884), s. 2 (*1*).

For power of Chief Commissioner to extend the local application of this Act, see the Burma Gaming Act (XVI. of 1884), s. 4 (*1*).

§ The territories are now known as Lower Burma.—See Act XX. of 1886, s. 2 (*1*) (*b*). The Chief Commissioner is styled Chief Commissioner of Burma.—See Proclamation, dated Sep. 25, 1886, *Gazette of India*, 25th *idem*, Pt. I., p. 539.

‖ The word "and" has been inserted by Act XII. of 1891.

¶ The territories are now known as Lower Burma.—See Act XX. of 1886, s. 2 (*1*) (*b*). The Chief Commissioner is styled Chief Commissioner of Burma.—See Proclamation, dated Sep. 25, 1886, *Gazette of India*, 25th *idem*, Pt. I., p. 539.

Act III. of 1867.

room, or place, whether by way of charge for the use of the instruments of gaming, or of the house, enclosure, room, or place, or otherwise howsoever:

Number. Words in the singular include the plural, and *vice versâ*: and

Gender. Words denoting the masculine gender include females.

2. Sections 13 and 17* of this Act shall extend to the whole of the said territories; and it shall be competent to the Lieutenant-Governor or the Chief Commissioner, as the case may be, whenever he may think fit, to extend, by a notification to be published in three successive numbers of the official Gazette, all or any of the remaining sections of this Act to any city, town, suburb, railway-station-house, and place being not more than three miles distant from any part of such station-house within the territories subject to his Government or Administration, and in such notification to define, for the purposes of this Act, the limits of such city, town, suburb, or station-house, and from time to time to alter the limits so defined.†

Power to extend Act.

From the date of any such extension, so much of any rule having the force of law which shall be in operation in the territories to which such extension shall have been made, as shall be inconsistent with or repugnant to any section so extended, shall cease to have effect in such territories.

3. Whoever, being the owner or occupier, or having the use, of any house, walled enclosure, room, or place situate within the limits to which this Act applies, opens, keeps, or uses the same as a common gaming-house; and

Penalty for owning or keeping, or having charge of, gaming-house.

whoever, being the owner or occupier of any such house, walled enclosure, room, or place as aforesaid, knowingly or wilfully permits the same to be opened, occupied, used, or kept by any other person as a common gaming-house; and

whoever has the care or management of, or in any manner assists in conducting, the business of any house, walled enclosure, room, or place as aforesaid, opened, occupied, used, or kept for the purpose aforesaid; and

whoever advances or furnishes money for the purpose of gaming with persons frequenting such house, walled enclosure, room, or place,

shall be liable to a fine not exceeding two hundred rupees, or to imprisonment of either description, as defined in the Indian Penal Code, for any term not exceeding three months.

4. Whoever is found in any such house, walled enclosure, room, or place playing or gaming with cards, dice, counters, money, or other instruments of gaming, or is found there present for the purpose of gaming, whether playing for any money, wager,

Penalty for being found in gaming-house.

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* The words and figures, "sections 13 and 17," have been substituted for the words and figures, "sections 13, 17, and 18," as s. 18 has already been repealed.—See Act XII. of 1891.

† Under s. 2, the remaining sections of this Act have been extended to a large number of places in Burma, too numerous to be here specified.

stake, or otherwise, shall be liable to a fine not exceeding one hundred rupees, or to imprisonment of either description, as defined in the Indian Penal Code, for any term not exceeding one month;

and any person found in any common gaming-house during any gaming or playing therein shall be presumed, until the contrary be proved, to have been there for the purpose of gaming.

Power to enter and authorize police to enter and search.

5. If the Magistrate of a district,* or other officer invested with the full powers of a Magistrate,† or the District Superintendent of Police, upon credible information, and after such inquiry as he may think necessary, has reason to believe that any house, walled enclosure, room, or place, is used as a common gaming-house,

he may either himself enter, or by his warrant authorize any officer of police, not below such rank as the Lieutenant-Governor or Chief Commissioner shall appoint in this behalf, to enter, with such assistance as may be found necessary, by night or by day, and by force, if necessary, any such house, walled enclosure, room, or place;

and may either himself take into custody, or authorize such officer to take into custody, all persons whom he or such officer finds therein, whether or not then actually gaming;

and may seize, or authorize such officer to seize, all instruments of gaming, and all moneys and securities for money, and articles of value, reasonably suspected to have been used, or intended to be used, for the purpose of gaming, which are found therein;

and may search, or authorize such officer to search, all parts of the house, walled enclosure, room, or place, which he or such officer shall have so entered when he or such officer has reason to believe that any instruments of gaming are concealed therein, and also the persons of those whom he or such officer so takes into custody;

and may seize, or authorize such officer to seize, and take possession of, all instruments of gaming found upon such search.

Finding cards, &c., in suspected houses, to be evidence that such houses are common gaming-houses.

6. When any cards, dice, gaming-tables, cloths, boards, or other instruments of gaming, are found in any house, walled enclosure, room, or place, entered or searched under the provisions of the last preceding section or about the person of any of those who are found therein, it shall be evidence, until the contrary is made to appear, that such house, walled enclosure, room, or place, is used as a common gaming-house, and that the persons found therein were there present for the purpose of gaming, although no play was actually seen by the Magistrate or police-officer, or any of his assistants.

Penalty on persons arrested for giving false names and addresses.

7. If any person found in any common gaming-house entered by any Magistrate or officer of police under the provisions of this Act, upon being arrested by any such officer, or upon being brought before any Magistrate, on being required by such officer or Magistrate to give his name and address, shall re-

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* For power of Local Government to authorize Magistrates of the second class to exercise the powers conferred by s. 5 on the Magistrate of the district, see Act XVI. of 1884, s. 5.

† Now the District Magistrate or a Magistrate of the first class.—See Act X. of 1882, s. 3.

Act III. of 1867.

fuse or neglect to give the same, or shall give any false name or address, he may, upon conviction before the same or any other Magistrate, be adjudged to pay any penalty not exceeding five hundred rupees, together with such costs as to such Magistrate shall appear reasonable, and on the non-payment of such penalty and costs, or, in the first instance, if to such Magistrate it shall seem fit, may be imprisoned for any period not exceeding one month.

On conviction for keeping gaming-house, instruments of gaming to be destroyed.

8. On conviction of any person for keeping or using any such common gaming-house, or being present therein for the purpose of gaming, the convicting Magistrate may order all the instruments of gaming found therein to be destroyed, and may also order all or any of the securities for money and other articles seized, not being instruments of gaming, to be sold and converted into money, and the proceeds thereof with all moneys seized therein to be forfeited; or, in his discretion, may order any part thereof to be returned to the persons appearing to have been severally thereunto entitled.

Proof of playing for stakes unnecessary.

9. It shall not be necessary, in order to convict any person of keeping a common gaming-house, or of being concerned in the management of any common gaming-house, to prove that any person found playing at any game was playing for any money, wager, or stake.

Magistrate may require any person apprehended to be sworn and give evidence.

10. It shall be lawful for the Magistrate before whom any persons shall be brought, who have been found in any house, walled enclosure, room, or place, entered, under the provisions of this Act, to require any such persons to be examined on oath or solemn affirmation, and give evidence touching any unlawful gaming in such house, walled enclosure, room, or place, or touching any act done for the purpose of preventing, obstructing, or delaying the entry into such house, walled enclosure, room, or place, or any part thereof, of any Magistrate, or officer authorized as aforesaid.

No person so required to be examined as a witness shall be excused from being so examined when brought before such Magistrate as aforesaid, or from being so examined at any subsequent time by or before the same or any other Magistrate, or by or before any Court on any proceeding or trial in any ways relating to such unlawful gaming or any such acts as aforesaid, or from answering any question put to him touching the matters aforesaid, on the ground that his evidence will tend to criminate himself.

Any such person so required to be examined as a witness, who refuses to make oath or take affirmation accordingly, or to answer any such question as aforesaid, shall be subject to be dealt with in all respects as any person committing the offence described in section 178 or section 179 (as the case may be) of the Indian Penal Code.

Witnesses indemnified.

11. Any person who shall have been concerned in gaming contrary to this Act, and who shall be examined as a witness before a Magistrate on the trial of any person for a breach of any of the provisions of this Act relating to gaming, and who, upon such examination, shall, in the opinion of the Magistrate, make true and faithful discovery, to the best of his knowledge, of all things as to which he shall be so examined, shall thereupon receive from the said Magistrate a certificate in writing to that effect, and shall be freed from all prosecutions under this Act for anything done before that time in respect of such gaming.

12. Nothing in the foregoing provisions of this Act contained shall be held to apply to any game of mere skill, wherever played.

Act not to apply to certain games.

Gaming and setting birds and animals to fight in public places.

13. A police-officer may apprehend without warrant—

any person found playing for money or other valuable thing with cards, dice, counters, or other instruments of gaming, used in playing any game not being a game of mere skill, in any "public street, place, or thoroughfare,"* situated within the limits aforesaid, or

any person setting any birds or animals to fight in any public street, place, or thoroughfare, situated within the limits aforesaid, or

any person there present aiding and abetting such public fighting of birds and animals.

Such person, when apprehended, shall be brought without delay before a Magistrate, and shall be liable to a fine not exceeding fifty rupees, or to imprisonment, either simple or rigorous, for any term not exceeding one calendar month;

and such police-officer may seize all instruments of gaming found in "such public place,"† or on the person of those whom he shall so arrest, and the Magistrate may, on conviction of the offender, order such instruments to be forthwith destroyed.

Destruction of instruments of gaming found in public places.

14. Offences punishable under this Act shall be triable by any Magistrate having jurisdiction in the place where the offence is committed.

Offences by whom triable.

But such Magistrate shall be restrained within the limits of his jurisdiction under the Code of Criminal Procedure, 1882,‡ as to the amount of fine or imprisonment he may inflict.

15. Whoever, having been convicted of an offence punishable under section 3 or section 4 of this Act, shall again be guilty of any offence punishable under either of such sections, shall be subject for every such subsequent offence to double the amount of punishment to which he would have been liable for the first commission of an offence of the same description:

Penalty for subsequent offence.

Provided that he shall not be liable in any case to a fine exceeding six hundred rupees, or to imprisonment for a term exceeding one year.

16. The Magistrate trying the case may direct any portion of any fine which shall be levied under sections 3 and 4 of this Act, or any part of the moneys or proceeds of articles seized and ordered to be forfeited under this Act, to be paid to an informer.

Portion of fine may be paid to informer.

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* In Lower Burma, for the words, "public street, place, or thoroughfare," the words, "street or thoroughfare or place to which the public have access," should be substituted.—See the Burma Gaming Act (XVI. of 1884), *s.* 6 (*a*), *infra*.

† In Lower Burma, for the words "such public place," the words, "such place," should be substituted.—See the Burma Gaming Act (XVI. of 1884), *s.* 6 (*b*), *infra*.

‡ See Act X. of 1882, ss. 3, 32, 34, and 446.

Act XIV. of 1867.

Recovery and application of fines.

17. All fines imposed under this Act may be recovered in the manner prescribed by sections 386, 387, and 389 of the Code of Criminal Procedure, 1882,* and such fines shall (subject to the provisions contained in the last preceding section) be applied as the Lieutenant-Governor or Chief Commissioner, as the case may be, shall from time to time direct.

ACT XIV. OF 1867.†

RECEIVED THE G.-G.'S ASSENT ON THE 1ST MARCH 1867.

An Act to provide for the assessment of the Pándhari tax in certain parts of the Central Provinces.

Preamble.

WHEREAS there has for many years existed, and now exists, in certain districts of the Central Provinces, a tax called the Pándhari Tax, assessable on all persons not engaged in agriculture: And whereas it is expedient to make rules for regulating the assessment of such tax: It is enacted as follows:—

Persons on whom the Pándhari tax is assessable.

Limitation of rates of assessment.

1. The Pándhari tax is hereby declared to be assessable on all persons‡ dwelling or personally working for gain, or carrying on business within the districts of Nágpur, Wardha, Chándá, Bhandára, Chindwára, Raipur, Biláspur, and Sambulpur, any part of whose income is derived from any source other than agriculture: Provided that no person whose estimated income is less than 75 rupees a year shall be assessed to the said tax; that no person shall be assessed to the said tax at a rate exceeding two per centum on his estimated income; and that no person shall be assessable to the said tax at a sum exceeding 500 rupees per annum.

Chief Commissioner may make rules as to assessment and collection of the Pándhari tax.

2. The Chief Commissioner of the Central Provinces may, from time to time, with the previous sanction of the Governor-General of India in Council, make and publish, in such manner as may seem fit, rules not inconsistent with the provisions of this Act or of any other law for the time being in force, to provide (amongst other things) for the matters hereinafter mentioned.

For what the rules may provide.

3. The rules made under the last preceding section may provide:—

(1.)—For regulating the manner, and rates, and classes of assessments:

(2.)—For regulating the time and manner of collecting the amount assessed; and for allowing, to the persons employed in the collection, fees not exceeding three *per centum* on the amount assessed upon the tax-payers:

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* The sections of the new Code cited in s. 17 have been substituted for s. 307 of Act X. of 1872.—See Act. X. of 1882, s. 3.

† Act XIV. of 1867 was declared by Act XIV. of 1874, s. 16, to be in force in the tract of land ceded to the British Government in 1863, and lying between the Railway Station at Sutna and the eastern boundary of the Jubbulpore District.

‡ Where a person is, in respect of any period, liable to the tax under Act II. of 1886, he is not, in respect of that period, to be assessed to the Pándhari tax levied under Act XIV. of 1867.—See Act II. of 1886, s. 48.

(3.)—For the imposition of penalties on persons convicted of the breach of any rule or regulation made under the last preceding section; provided that no penalty shall exceed a fine of 50 rupees, or imprisonment for a term not exceeding eight days : Act XVI. of 1367.

(4.)—For exempting from the operation of this Act special classes of persons in receipt of fixed salaries or pensions, in respect of such salaries or pensions :

(5.)—For determining the person or persons by whom, and the manner in which, in the case of any person to whom this Act shall apply, his or her estimated income, within the meaning of section 1 of this Act, shall be ascertained.

Recovery of arrears.

4. Arrears of the said tax shall be recoverable by distress and sale of any moveable property belonging to the defaulter; or, when he or she shall not have any moveable property of which a distraint can be made, or when, after his or her moveable property shall have been distrained and sold, the arrear due, together with all expenses of the distress and sale, is not liquidated by the proceeds of such sale, then under such rules and procedure as may, for the time being, be in force in the Central Provinces for the realization out of immoveable property of land-revenue.

Breaches of rules by whom triable.

5. Breaches of rules made under section 2 of this Act shall be triable by any Magistrate.

Extension of this Act to other parts of the Central Provinces.

6. The provisions of this Act may be extended by order of the Governor-General of India in Council to any district or districts of the Central Provinces other than those named in section 1 of this Act.

7. [*Repealed by Act XVI. of 1874.*]

ACT XVI. OF 1867.*

RECEIVED THE G.-G.'S ASSENT ON THE 1ST MARCH 1867.

An Act to authorize the making of acting appointments to certain Judicial Offices.

Preamble.

WHEREAS the Governor-General of India in Council or the Local Government, as the case may be, is empowered by divers enactments to appoint the Judges of certain Courts in British India : And whereas it has been doubted whether he or it is empowered to appoint persons to act temporarily as such Judges, and it is expedient to remove such doubts; It is hereby enacted as follows :—

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* Now see Act I. of 1868, s. 3, cl. (6).

Act XVI. of 1867 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum.—See *Gazette of India*, 22nd October, 1881, Pt. I., p. 504.

Act XVIII. of 1867.

Power to appoint acting Judges.

1. In every case in which the Governor-General of India in Council, or the Local Government, as the case may be, has power under any Act or Regulation to appoint a Judge of any Court in British India, such power shall be taken to include the power to appoint any person capable of being appointed a permanent Judge of such Court, to act as Judge of the same Court for such time as the Governor-General of India in Council or the Local Government, as the case may be, shall direct.

Their powers and duties.

Every person so appointed to act temporarily as a Judge of any such Court shall have the powers, and perform the duties which he would have had and been liable to perform in case he had been duly appointed a permanent Judge of the same Court.

Construction of enactments referred to.

2. Every such Act and Regulation shall be construed as if it contained a special clause to the purport or effect of the first section of this Act.

ACT XVIII. OF 1867.

THE JHANSI COURTS' ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 8TH MARCH 1867.

*An Act to define the jurisdiction of the Courts of Civil Judicature in the Jhánsi Division.**

Preamble.

WHEREAS it is expedient to define the jurisdiction of the Courts of Civil Judicature in the Jhánsi Division; It is hereby enacted as follows:—

Short title.

1. This Act shall be called "The Jhánsi Courts' Act, 1867."

2. [*Repealed by Act XIV. of 1870.*]

Certain rules relating to jurisdiction and procedure of Revenue-officers in Jhánsi to cease to have effect.

3. So much of the rules passed by the Government of the North-Western Provinces, relating to the jurisdiction and procedure of Revenue-officers within the districts of the Jhánsi Division, and confirmed by the said Act No. XXIV. of 1864,† section 1, as directed that suits regarding landed property should be heard by the Revenue Courts, shall cease to have effect in the said districts with regard to all such suits except summary suits.

And so much of the said rules as relates to summary suits in the Revenue Courts, whether as Courts of first instance or appeal, shall remain in force until the said Government shall by notification in the official Gazette declare otherwise.

Interpretation-clause.

4. In this Act—

"High Court" means the High Court of Judicature for the North-Western Provinces of the Presidency of Fort William in Bengal;

"Lieutenant-Governor" means the Lieutenant-Governor of the said Provinces, and

"Assistant Commissioner" includes Extra Assistant Commissioner.

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* See Act XXVII. of 1867, *infra*. † Repealed by Act XV. of 1874.

Act XVIII. of 1867.

5. For the purposes of this Act, the local jurisdiction of a Deputy Commissioner shall be deemed a District, and the Court of such Deputy Commissioner shall be deemed the District Court.

"District."
"District Court."

The local jurisdiction of a Commissioner shall, in like manner, be deemed a Division, and his Court a Divisional Court.

"Division."
"Divisional Court."

6. There shall be seven grades of Courts in the Jhánsi Division, which shall be in addition to any Courts of Small Causes, and to any other Courts established under any Act which may hereafter be passed, namely :—

Grades of Courts in Jhánsi Division.

(1.) The Court of the tahsíldár of the second class :

(2.) The Court of the tahsíldár of the first class :

(3.) The Court of the Assistant Commissioner of the second class :

(4.) The Court of the Assistant Commissioner of the first class :

(5.) The Court of the Deputy Commissioner :

(6.) The Court of the Commissioner :

(7.) The High Court.

7. The Lieutenant-Governor shall have power to declare to which of the said grades any tahsíldár and any Assistant Commissioner in the said Division shall belong.

Power to declare grade of officers.

8. The Court of the tahsíldár of the second class shall have power to try and determine suits of every description in which the subject-matter does not exceed one hundred rupees in value or amount.

Jurisdiction of Court of tahsíldár of second class.

9. The Court of the tahsíldár of the first class shall have power to try and determine suits of every description in which the subject-matter does not exceed three hundred rupees in value or amount.

Jurisdiction of Court of tahsíldár of first class.

10. The Court of the Assistant Commissioner of the second class shall have power to try and determine suits of every description in which the subject-matter does not exceed one thousand rupees in value or amount.

Jurisdiction of Court of Assistant Commissioner of second class.

11. The Court of the Assistant Commissioner of the first class shall have power to try and determine suits of every description in which the subject-matter does not exceed five thousand rupees in value or amount.

Jurisdiction of Court of Assistant Commissioner of first class.

12. The Court of the Deputy Commissioner shall have power to try and determine suits of every description and of any amount, and to hear appeals from the original decisions in suits and (where an appeal is allowed by the Code of Civil Procedure) from the orders of the Courts of the first, second, and third grades.

Jurisdiction of Court of Deputy Commissioner.

13. The Court of the Commissioner shall have power to hear and determine appeals from the original decisions in suits and (where an appeal is allowed by the Code of Civil Procedure) from the orders of the Courts of the fourth and fifth grades.

Jurisdiction of Court of Commissioner.

Act XVIII. of 1867.

Appellate jurisdiction of High Court.

14. The High Court shall have power to hear and determine appeals from original decisions in suits and (where an appeal is allowed by the Code of Civil Procedure) from the orders of the Commissioner, and also applications for a special appeal as provided in the said Code, from the decisions passed in regular appeal by the Deputy Commissioners and by the Commissioner of the Division.

Time for presenting appeals.

15. The memorandum of appeal, prepared in the form, and containing the particulars mentioned in the Code of Civil Procedure, shall be presented in the Court empowered to hear the appeal within the period hereinafter specified, unless the appellant shall show sufficient cause to the satisfaction of such Court for not having presented the memorandum of appeal within the said period; that is to say, thirty days, if the appeal lie to the Deputy Commissioner; six weeks, if the appeal lie to the Commissioner of the Division; and ninety days, if the appeal lie to the High Court.

The period shall be reckoned from and exclusive of the day on which the decision or order appealed against was passed, and also exclusive of such time as may be requisite for obtaining a copy of the decree or order from which the appeal is made.

Memoranda of special appeal shall be presented in the High Court within the period hereinbefore fixed for appeals.

Extraordinary original jurisdiction.

16. The High Court shall have power to remove, and to try and determine, as a Court of extraordinary original jurisdiction, any suit being or falling within the jurisdiction of any Court in the said division, when the High Court shall think proper to do so either on the agreement of the parties to that effect or for purposes of justice, the reasons for so doing being recorded on the proceedings of the High Court.

High Court to superintend, and to frame rules of practice for, subordinate Courts.

17. The High Court shall have superintendence over all Courts in the said division, and shall have power to call for returns, and to make and issue general rules for regulating the practice and proceedings of such Courts, and also to prescribe forms for every proceeding in the said Courts for which it shall think necessary that a form be provided and also for keeping all books, entries, and accounts to be kept by the officers, and also to settle tables of fees to be allowed to the attorneys, vakils, and all clerks and officers of such Courts, and from time to time to alter any such rule or form or table;

and the rules so made, and the forms so framed, and the tables so settled, shall be used and observed in the said Courts:

provided that such general rules and forms and tables be not inconsistent with the provisions of any law in force, and shall, before they are issued, have received the sanction of the Lieutenant-Governor.

Power to invest person with certain powers.

18. Whenever the state of the public business requires it, the Lieutenant-Governor shall have power to invest any person with the powers of a Commissioner or of a Deputy Commissioner in any part of the Jhánsi Division.

Court in which suit shall be instituted.

19. Every suit shall be instituted in the Court of the lowest grade competent to try it: provided that no suit cognizable by a Court of Small Causes shall be heard or deter-

mined in any other Court having any jurisdiction within the local limits of the jurisdiction of such Court of Small Causes. Act XVIII. of 1867.

Appeal to lie from all decisions, except when expressly prohibited.

20. Except when otherwise provided in any Regulation or Act for the time being in force, an appeal shall lie from the decisions of the Courts of original jurisdiction to the Courts authorized by this Act to hear appeals from the decisions of those Courts.

Deputy Commissioner may distribute business among subordinate Courts.

21. The Deputy Commissioner may direct the business in the Courts subordinate to him, holding their sittings at the same place, to be distributed among such Courts in which way as he shall think fit:

Provided that no Court shall try any suit in which the amount or value of the claim shall exceed its proper jurisdiction.

Transfer of suits from subordinate Court to Commissioner's or Deputy Commissioner's Court.

22. The Commissioner of the division or the Deputy Commissioner may withdraw any suit instituted in any Court subordinate to him, and try such suit himself, or refer it for trial to any other such subordinate Court and competent in respect of the value or amount of the suit to try the same.

The Commissioner of the division may also withdraw any appeal instituted in the Court of any Deputy Commissioner subordinate to him, and try the appeal himself, or refer it for trial to the Court of any other Deputy Commissioner in his division.

High Court may transfer suits from one subordinate Court to another.

23. The High Court may order that the cognizance of any suit or appeal which shall be instituted in any Court subordinate to such High Court, not being a Court of Small Causes, shall be transferred to any other such subordinate Court, competent in respect of the value or amount of the subject-matter of the suit or appeal to try the same.

Suits for immoveable property situate in different districts.

24 If the suit be for any immoveable property situate within the limits of different District Courts within the same division, the suit may be brought in any Court otherwise competent to try it within the jurisdiction of which any portion of such property is situate;

but in such case the Court in which the suit is brought shall apply to the Commissioner of the division for authority to proceed with the suit; and the Commissioner, after hearing the objections, if any, of the defendant, may give such authority.

If the suit is brought in any Court subordinate to the Court of the Deputy Commissioner, the application shall be submitted to the Commissioner of the division through the Deputy Commissioner to whom such Court is subordinate.

Suits for immoveable property situate in districts subject to different Commissioners.

25. If the District Courts within the limits of whose jurisdiction any immoveable property sued for is situate are subordinate to different Commissioners, application for authority to proceed with the suit shall be made to the Commissioner of the division to whom the District Court in which the suit is brought is subordinate, and such Commissioner may, after hearing the objections, if any, of the defendant, give authority to proceed with the suit.

Acts XIX. and XXII. of 1867.

ACT XIX. OF 1867.

RECEIVED THE G.-G.'S ASSENT ON THE 8TH MARCH 1867.

An Act to make further provision for the administration of justice in the District of Darjiling.

Preamble.

WHEREAS it is expedient to make further provision for the administration of justice in the District of Dárjiling; It is hereby enacted as follows:—

1. [*Repeal of Act X. of 1863.*] *Repealed by Act XVI. of 1874.*

High Court, Fort William, to exercise jurisdiction over Dárjiling.

2. The High Court of Judicature for the Bengal Division of the Presidency of Fort William shall have and exercise, with regard to the District of Dárjiling, all such jurisdiction and powers as it has and exercises with regard to any other territory.*

ACT XXII. OF 1867.†

RECEIVED THE G.-G.'S ASSENT ON THE 15TH MARCH 1867.

An Act for the regulation of public Sarais and Puraos.

Preamble.

WHEREAS it is expedient to provide for the regulation of public Sarais and Puraos; It is hereby enacted as follows:—

1. [*Repealed by Act XII. of 1891.*]

Interpretation-clause.

2. In this Act, unless there be something repugnant in the subject or context,—

"Sarai" means any building used for the shelter and accommodation of travellers, and includes, in any case in which only part of a building is used as a sarai, the part so used of such building:

It also includes a purao so far as the provisions of this Act are applicable thereto:

"Keeper of a sarai" includes the owner, and any person having or acting in the care or management thereof:

"Magistrate of the District" means the chief officer charged with the executive administration of a district in criminal matters, whatever may be his designation:

Words in the singular include the plural, and *vice versâ*. And in any place in which this Act shall operate, "Local Government" shall mean the person

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* *I.e.*, outside the local limits of its ordinary original civil jurisdiction.

† Act XXII. of 1867 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	...	See *Gazette of India.*	Oct. 22, 1881, Pt. I., p. 504.
The North-Western Provinces Tarái		Ditto	Sep. 23, 1876, Pt. I., p. 505.

See also note to s. 17.

administering executive government in such place, and shall include a Chief Commissioner and the Commissioner in Sindh. Act XXII. of 1867.

Notice of Act to be given to keepers of sarais.

3. Within six months after this Act shall come into operation, the Magistrate of the District in which any sarai to which this Act shall apply may be situate shall, and from time to time thereafter such Magistrate may, give to the keeper of every such sarai notice in writing of this Act, by leaving such notice for the keeper at the sarai; and shall by such notice require the keeper to register the sarai as by this Act provided.

Form of notice.

Such notice may be in the form in the schedule to this Act annexed or to the like effect.

Registers of sarais to be kept.

4. The Magistrate of the District shall keep a register in which shall be entered by such Magistrate, or such other person as he shall appoint in this behalf, the names and residences of the keepers of all sarais within his jurisdiction, and the situation of every such sarai.

No charge shall be made for making any such entry.

Lodgers, &c., not to be received in sarais until registered.

5. After one month after the giving of such notice to register as by this Act provided, the keeper of any sarai or any other person shall not receive any lodger, or allow any person, cattle, sheep, elephant, camel, or other animal, or any vehicle, to halt or be placed in such sarai until the same, and the name and residence of the keeper thereof, shall have been registered as by this Act provided.

Magistrate may refuse to register keeper not producing certificate of character.

6. The Magistrate of the District may, if he shall think fit, refuse to register, as the keeper of a sarai, a person who does not produce a certificate of character in such form, and signed by such persons, as the Local Government shall from time to time direct.

Duties of keepers of sarais.

7. The keeper of a sarai shall be bound—

(1) when any person in such sarai is ill of any infectious or contagious disease, or dies of such disease, to give immediate notice thereof to the nearest police-station:

(2) at all times, when required by any Magistrate or any other person duly authorized by the Magistrate of the District in this behalf, to give him free access to the sarai, and allow him to inspect the same or any part thereof:

(3) to thoroughly cleanse the rooms and verandahs and drains of the sarai, and the wells, tanks, or other sources from which water is obtained for the persons or animals using it, to the satisfaction of, and so often as shall be required by, the Magistrate of the District, or such person as he shall appoint in this behalf:

(4) to remove all noxious vegetation on or near the sarai, and all trees and branches of trees capable of affording to thieves means of entering or leaving the sarai:

(5) to keep the gates, walls, fences, roofs, and drains of the sarai in repair:

(6) to provide such number of watchmen as may, in the opinion of the Magistrate of the District, subject to such rules as the Local Government may prescribe in this behalf, be necessary for the safety and protection of persons and animals or vehicles lodging in, halting at, or placed in, the sarai: and

Act XXII. of 1867.

(7) to exhibit a list of charges for the use of the sarai at such place and in such form and languages as the Magistrate of the District shall from time to time direct.

Power to order reports from keepers of sarais.

8. The keeper of a sarai shall, from time to time, if required so to do by an order of the Magistrate of the District served upon him, report, either orally or in writing, as may be directed by the Magistrate, to such Magistrate, or to such person as the Magistrate shall appoint, every person who resorted to such sarai during the preceding day or night.

When schedules to be furnished.

If written reports are required for any space of time exceeding a single day or night, schedules shall be furnished by the Magistrate of the District to the keeper.

Keeper to fill up and send schedules.

The keeper shall from time to time fill up the said schedules with the information so required, and transmit them to the said Magistrate, in such manner, and at such intervals, as may from time to time be ordered by him.

Power to shut up, secure, clear, and clean deserted sarais.

9. If any sarai, by reason of abandonment or of disputed ownership, shall remain untenanted, and thereby become a resort of idle and disorderly persons, or become in a filthy or unwholesome state, or be complained of by any two or more of the neighbours as a nuisance, the Magistrate of the District, after due enquiry, may cause notice in writing to be given to the owner, or to the person, claiming to be the owner, if he be known and resident within the district, and may also cause such notice to be put on some conspicuous part of the sarai requiring the persons concerned therein, whoever they may be, to secure, enclose, clean, or clear the same ;

and, if such requisition shall not be complied with within eight days, the Magistrate of the District may cause the necessary work to be executed, and all expenses thereby incurred shall be paid by the owner of the sarai, and shall be recoverable like penalties under this Act, or, in case of abandonment or disputed ownership of the sarai, by the sale of any material found therein.

Taking down or repairing ruinous sarais.

10. If a sarai, or any part thereof, be deemed by the Magistrate of the District to be in a ruinous state, or likely to fall, or in any way dangerous to the persons or animals lodging in, or halting at, the sarai, he shall give notice in writing to the keeper of the sarai, requiring him forthwith to take down, repair, or secure (as the case may be) the sarai, or such part thereof, as the case may require.

If the keeper do not begin to take down, repair, or secure the sarai, or such part as aforesaid, within three days after such notice, and complete such work with due diligence, the Magistrate shall cause all or so much of the sarai as he shall think necessary to be taken down, repaired, or otherwise secured.

All the expenses so incurred by the Magistrate shall be paid by the keeper of the sarai, and shall be recoverable from him as hereinafter mentioned.

Sale of materials of ruinous sarais.

11. If any such sarai, or any part thereof, be taken down by virtue of the powers aforesaid, the Magistrate of the District may sell the materials thereof, or so much of the same as shall be taken down under the provisions of the last preceding section, and apply the proceeds of such sale in payment of the expenses incurred, and shall restore the overplus (if any) arising from such sale to the owner of

such sarai on demand, and may recover the deficiency (if any) as if the amount thereof were a penalty under this Act.

Penalty for permitting sarais to be filthy or overgrown.

12. Whoever, being the keeper of any sarai, suffers the same to be in a filthy and unwholesome state, or overgrown with vegetation, or, after the expiration of two days from the time of his receiving notice in writing from the Magistrate of the District to cleanse or clear the same, or after he shall have been convicted of suffering the same to be in such state or so overgrown as aforesaid, shall allow the same to continue in such state, or so overgrown, shall be liable to the penalties provided in section 14 of this Act:

Proviso.

Provided that the Magistrate of the District may, in lieu of enforcing such daily penalty, enter on, and cleanse or clear, the said sarai, and the expense incurred by the Magistrate in respect thereof shall be paid to him by the keeper, and shall be recoverable as by this Act provided in the case of penalties.

Power for Local Government to make regulations.

13. The Local Government may from time to time make regulations for the better attainment of the objects of this Act, provided that such rules be not inconsistent with this Act, or with any other law for the time being in force, and may from time to time repeal, alter, and add to, the same.

Regulations to be published.

All regulations made under this Act, and all repeals thereof, and alterations and additions thereto, shall be published in the local official Gazette.

Penalty for infringing Act or regulations.

14. If the keeper of a sarai offend against any of the provisions of this Act, or any of the regulations made in pursuance of this Act, he shall, for every such offence, be liable, on conviction before any Magistrate, to a penalty not exceeding twenty rupees, and to a further penalty, not exceeding one rupee a day, for every day during which the offence continues:

Saving of penalties incurred otherwise.

Provided always that this Act shall not exempt any person from any penalty or other liability to which he may be subject irrespective of this Act.

Recovery of penalties.

All penalties imposed under this Act may be recovered in the same manner as fines may be recovered under sections 386, 387, and 389 of the Code of Criminal Procedure.*

Effect of conviction for third offence.

15. Where a keeper of a sarai is convicted of a third offence under this Act, he shall not afterwards act as keeper of a sarai without the license in writing of the Magistrate of the District, who may either withhold such license, or grant the same on such terms and conditions as he may think fit.

Section 8 only to apply to certain sarais.

16. No part of this Act, except section 8, shall apply to any sarai which may be under the direct management of the Local Government, or of any municipal committee.

Extent of Act.

17. This Act shall, in the first instance, extend only to the territories under the government of the Lieutenant-Governor of the North-West Provinces of the Presidency of Fort William in Bengal.

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* See Act X. of 1882, s. 3.

Act XXIII. of 1867.

Power to Local Government to extend Act.

But it shall be lawful for the Local Government, by notification in the local Gazette, to extend this Act,* *mutatis mutandis*, to any other part of the territories which are or may be vested in Her Majesty or Her successors by the Statute 21 & 22 Vic., cap. 106 (*an Act for the better government of India*), except the towns of Calcutta, Madras, and Bombay.†

Short title.

18. This Act may be called "The Sarais Act, 1867."

SCHEDULE.

FORM OF NOTICE.

Take notice that on the day of 1867, an Act, called "The Sarais Act, 1867," was passed, and that before the day of 18 you, being the keeper of a sarai [*or* purao] within [*here state the district over which the jurisdiction of the Magistrate giving the notice extends*], must have your sarai [*or* purao] registered, and that the register is to be kept at [*here state where the register is to be kept*], and that, if you do not have your sarai [*or* purao] so registered, you will be liable to a penalty not exceeding twenty rupees, and to a further penalty, not exceeding one rupee a day, for every day during which the offence continues, and that, on your applying to [*here give the name and address of the person to keep the register*], he will register your sarai [*or* purao] free of all charge to you.

Dated the day of 18 .

ACT XXIII. OF 1867.

RECEIVED THE G.-G.'S ASSENT ON THE 18TH MARCH 1867.

An Act for the Suppression of Murderous Outrages in certain Districts of the Punjab.

Preamble.

WHEREAS in certain districts of the Punjab, fanatics have frequently murdered or attempted to murder servants of the Queen and other persons: And whereas the general law of the country is not adequate to suppress such offences; It is hereby enacted as follows:—

Lieutenant-Governor empowered to extend Act to any part of Punjab.

1. It shall be lawful for the Lieutenant-Governor of the Punjab, with the previous consent of the Governor-General of India in Council, by a proclamation published in the official Gazette, from time to time to declare any part or parts of the territories under his government to be subject to the operation of all or any of the provisions of this Act,‡ and also, by such proclamation and with such consent as aforesaid, from time to time to withdraw

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* It has been extended to Oudh.—See Notification No. 591, dated 25th July 1883. *North-Western Provinces and Oudh Gazette*, 28th July 1883, Pt. I., p. 433.

It has also been extended to the Punjab.—See Notification No. 4499, dated 13th December 1879; see *Punjab Gazette*, 18th December 1879, Pt. I., p. 727.

† Here the words, "and the settlement of Prince of Wales's Island, Singapore, and Malacca," have been repealed by Act XII. of 1891.

‡ Under s. 1, the districts of Peshawar, Kohát, Hazára, Dera Gházi Khán, Dera Ismail Khán, and Bannu, have been declared subject to all the provisions of this Act.—See Notification No. 1063, *Punjab Gazette*, July 25, 1878, Pt. I., p. 289.

from the operation of such provisions any part or parts of the said territories which he may previously have declared to be subject thereto, and in like manner, as occasion shall require, to subject the same part or parts again to the operation of the same provisions or of any of them. Act XXIII. of 1867.

Punishment of fanatics murdering or attempting to murder.

2. Any fanatic who shall murder, or who shall, within the meaning of the Indian Penal Code, section 307, attempt to murder, any servant of the Queen or other person, shall, on conviction thereof, be punished either with death or with transportation for life, and all his property shall be forfeited to Government.

3. [*Repealed by Act XVI. of 1874.*]

Forfeiture of property and disposal of bodies of fanatics killed in committing outrages punishable under Act.

4. Whenever any fanatic shall be killed in the act of committing any such offence as aforesaid, or, being wounded and taken prisoner in the act of committing any such offence as aforesaid, shall afterwards die of his wounds, it shall be competent to the Sessions Judge or Commissioner* who, under the provisions hereinafter contained, would have had cognizance of the offence if the offender could have been brought to trial, to proceed to hold an inquest into the circumstances of the death of the offender, and on proof of his having been killed as aforesaid, or of his having died of wounds received as aforesaid, to adjudge that the whole of his property shall be forfeited to Government, and to dispose of his body as such Sessions Judge or Commissioner* shall think fit.

Trial before Commissioner.

5. Subject to the provision contained in section 14 of this Act, any offence triable under this Act shall be tried by the Sessions Judge or Commissioner* of the Division in which it has been committed; and in respect of all such offences, the Sessions Judge or Commissioner* shall follow the procedure prescribed for a Magistrate by section 149, Chapter XVII., and the provisions applicable to warrant-cases of the Code of Criminal Procedure :†

Provided that, if he shall be of opinion that any witness or evidence is offered for the purpose of vexation or delay, or of defeating the ends of justice, he may require the accused person to satisfy him that there are reasonable ground for believing that such witness or evidence is material, and if the Sessions Judge or Commissioner* be not so satisfied, he shall not be bound to summon the witness or examine the evidence so offered.

Trial to be with aid of assessors.

6. Trials under this Act before the Sessions Judge or Commissioner* shall be conducted with the aid of two or more assessors as members of the Court.

The Sessions Judge or Commissioner* may appoint such persons (other than persons specified in section 405‡ of the Code of Criminal Procedure) at such time and in such manner as he may think fit to serve as assessors, and no person shall be exempt, within the meaning of section 406‡ of the same Code, from serving as such assessors.

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* For the word "Commissioner" wherever it occurred, the words "Sessions Judge or Commissioner" have been substituted by Act IX. of 1877, s. 2.

† Now Act X. of 1882.—See s. 3, *ib.* For the corresponding provisions of the Code of 1882 compare s. 204, Ch. XXI., and the provisions applicable to warrant-cases.

‡ Now Act X. of 1882.—See s. 3, *ib.* For the corresponding provisions of the Code of 1882 compare ss. 278 and 320.

Act XXIII. of 1867.

The provisions of the Code of Criminal Procedure shall, save as aforesaid, apply to assessors appointed under this section.

7. When any trial under this Act is concluded, if the accused person be convicted, it shall be sufficient if the Court, in passing judgment, and in recording the finding and sentence, shall specify the offence of which he is convicted, and the Court shall immediately issue a warrant to the officer in charge of the jail in which the prisoner is confined to cause the sentence to be carried into execution, and such sentence shall be carried into execution accordingly.

What the judgment is to specify.

No sentence of death passed under this Act shall require confirmation by any Court.

8. When any person shall be sentenced to death under this Act, his body shall be disposed of as the Sessions Judge or Commissioner by whom he was so sentenced shall direct.

Disposal of bodies of criminals sentenced to death.

9. The proceedings in every trial held under this Act shall be reported to the Lieutenant-Governor, without unnecessary delay, by the officer before whom such trial shall have been held.

Proceedings to be reported to Lieutenant-Governor.

10. Notwithstanding anything contained in the Code of Criminal Procedure, 1882,* "or in any other enactment for the time being in force,"† no appeal shall lie from any order or sentence under this Act.

No appeal from orders or sentences under Act.

11. If any Sessions Judge or Commissioner in whom jurisdiction is vested by this Act shall be of opinion that the accused person has committed an offence punishable under the Indian Penal Code, but that such offence is not contemplated by the preamble to this Act, the offender shall be dealt with in manner provided in such case by the Code of Criminal Procedure, 1882.*

Procedure when Sessions Judge or Commissioner thinks offender's crime not contemplated by Act.

12. The said Lieutenant-Governor shall have, with respect to the confinement of any person charged with or suspected of an intention to commit any offence punishable under this Act, the powers which are vested in the Governor-General of India by any law regarding the confinement of persons charged with or suspected of State-offences ;‡ and the provisions of any such law shall, *mutatis mutandis*, be applicable to all cases in which the Lieutenant-Governor shall proceed under the authority of this section.

Lieutenant-Governor's powers as to confinement of persons under Act.

13. Any person having the full powers of a Magistrate may cause any person against whom there are in his judgment grounds of proceeding under the last preceding section, to be apprehended ; and, after such enquiry as he may think necessary, may detain such person in safe custody until he shall have received the orders of the said Lieutenant-Governor, to whom, in all such cases, he shall report his proceedings without unnecessary delay.

Power of Magistrate as to persons suspected.

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* See Act X. of 1882, s. 3.

† The words quoted have been substituted for the original by Act XII. of 1891, Sch. II.

‡ See Regulation III. of 1818.

14. The jurisdiction conferred by this Act on a Sessions Judge or Commissioner may be exercised, in the case of any offence punishable under this Act, by any person having the full powers of a Magistrate whom the Sessions Judge or Commissioner to whom he may be subordinate, or the said Lieutenant-Governor, shall, after the commission of such offence, specially invest with such jurisdiction.

Exercise of jurisdiction conferred by Act.

15. It shall be lawful for the said Lieutenant-Governor, either on his own motion or at the request of the Chief Court of the Punjab, from time to time to withdraw any class of cases from the operation of this Act.

Power to withdraw any class of cases from operation of Act.

16 With the previous consent of the said Lieutenant-Governor, but not otherwise, the said Chief Court may, from time to time, make and issue circular orders for the guidance of officers in cases under this Act; provided that such orders are consistent with the provisions herein contained.

Power to issue circular orders.

All such order shall be published in the official Gazette, and shall be obeyed by the officers aforesaid.

17. [*Repealed by Act XII. of 1891, Sch. I.*]

Act XXV. of 1867.

ACT XXV. OF 1867.*

RECEIVED THE G.-G.'S ASSENT ON THE 22ND MARCH 1867.

An Act for the regulation of Printing-presses and Newspapers, for the preservation of copies of books printed in British India, and for the registration of such books.

Preamble.

WHEREAS it is expedient to provide for the regulation of printing-presses and of periodicals containing news, for the preservation of copies† of every book printed or lithographed in British India, and for the registration of such books; It is hereby enacted as follows:—

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* Act XXV. of 1867 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886.

It is included in the Schedule to the Santál Parganas Laws Regulation, III. of 1886.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh	See *Gazette of India*	Dec. 4, 1880, Pt. I., p. 672.
Aden	Ditto	June. 28, 1879, Pt. I., p. 434.
Territory of Peint	Ditto	Mar. 12, 1887, Pt. I., p. 145.
West Jalpáiguri, the Western Dvárs (that is, the country lying between the Tista and Sunkos rivers in the Jalpáiguri District), the Western Hills of Dárjiling (that is, the hills west of the Tista river in the District of Dárjiling), the Dárjiling Tarái, and the Damson Sub-division of the Dárjiling District	Ditto	Mar. 5, 1881, Pt. I., p. 74.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	Oct. 22, 1881, Pt. I., p. 504.
Kumáon and Garhwál	Ditto	Nov. 4, 1876, Pt. I., p. 605.
The scheduled portion of the Mirzápur District	Ditto	May 31, 1879, Pt. I., p. 383.
Jaunsar Bawár	Ditto	May 31, 1879, Pt. I., p. 382.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán	Ditto	Jan. 30, 1886, Pt. I., p. 48.
The District of Silhat	Ditto	Oct. 4, 1879, Pt. I., p. 631.
The Districts of Kámrup, Naugong, Darrang, Sibságar, Lakhimpur, Goalpára (excluding the Eastern Dvárs), and Káchár (excluding the North Káchár Hills)	Ditto	Aug. 24, 1878, Pt. I., p. 533.
The Island of Perim	Ditto	Jan. 1, 1887, Pt. I., p. 5.

It has been extended, under the same Act, to the North-Western Provinces Tarái.—See *Gazette of India*, Sep. 23, 1876, Pt. I., p. 505.

It has been declared, under the same Act, not to be in force in the District of Lahaul.—See *Gazette of India*, May 1, 1886, Pt. I., p. 301.

† In the preamble, the word "three," which had been originally inserted before the word "copies," has been omitted, having been repealed by Act X. of 1890, s. 1.

Act XXV. of 1867.

PART I.

PRELIMINARY.

Interpretation-clause.

1. In this Act, unless there shall be something repugnant in the subject or context,—

"Book" includes every volume, part or division of a volume, and pamphlet, in any language, and every sheet of music, map, chart, or plan separately printed or lithographed:

"British India" means the territories which are or shall be vested in Her Majesty or Her successors by the Statute 21 and 22 Vic., cap. 106 (*an Act for the better government of India*):*

"Magistrate" means any person exercising the full powers of a Magistrate, and includes a Magistrate of Police:†

Words in the singular include the plural, and *vice versâ*: words denoting the masculine gender include females:

And in every part of British India to which this Act shall extend, "Local Government" shall mean the person authorized by law to administer executive government in such part, and includes a Chief Commissioner.

2. [*Repealed by Act XIV. of 1870.*]

PART II.

OF PRINTING-PRESSES AND NEWSPAPERS.

Particulars to be printed on books and papers.

3. Every book or paper printed within British India shall have printed legibly on it the name of the printer and the place of printing, and (if the book or paper be published) "the name"‡ of the publisher, and the place of publication.

Keeper of printing-press to make declaration.

4. No person shall, within British India, keep in his possession any press for the printing of books or papers, who shall not have made and subscribed the following declaration before the Magistrate within whose local jurisdiction such press may be:—

"I, *A B*, declare that I have a press for printing at————." And this last blank shall be filled up with a true and precise description of the place where such press may be situate.

Rule as to publication of printed periodicals containing public news.

5. No printed periodical work, containing public news or comments on public news, shall be published in British India, except in conformity with the rules hereinafter laid down:—

(*1*) The printer and the publisher of every such periodical work shall appear before the Magistrate within whose local jurisdiction such work shall be

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* Here the words, "other than the settlement of Prince of Wales's Island, Singapore, and Malacca," have been omitted, having been repealed by Act XII. of 1891.

† In s. 1, in the definition of the word "Magistrate," the words "and a Justice of the Peace," which had originally been inserted after the word "Police," has been omitted, having been repealed by Act X. of 1890, s. 2.

‡ The words quoted have been inserted by Act XII. of 1891.

Act XXV. of 1867.

published and shall make and subscribe, in duplicate, the following declaration :

"I, *A B*, declare that I am the printer [*or* publisher, *or* printer and publisher] of the periodical work entitled——and printed [*or* published, *or* printed and published, *as the case may be*] at——." And the last blank in this form of declaration shall be filled up with a true and precise account of the premises where the printing or publication is conducted :

(2) As often as the place of printing or publication is changed, a new declaration shall be necessary :

(3) As often as the printer or the publisher who shall have made such declaration as is aforesaid shall leave British India, a new declaration from a printer or publisher resident within the said territories shall be necessary.

Authentication of declaration.

6. Each of the two originals of every declaration so made and subscribed as is aforesaid shall be authenticated by the signature and official seal of the Magistrate before whom the said declaration shall have been made.

Deposit.

One of the said originals shall be deposited among the records of the office of the Magistrate, and the other shall be deposited among the records of the High Court of Judicature or "other principal Civil Court of original jurisdiction for the place where"* the said declaration shall have been made.

Inspection and copies of declaration.

The officer in charge of each original shall allow any person to inspect that original on payment of a fee of one rupee, and shall give to any person applying a copy of the said declaration, attested by the seal of the Court which has the custody of the original, on payment of a fee of two rupees.

Office-copy of declaration to be *primâ-facie* evidence.

7. In any legal proceeding whatever, as well civil as criminal, the production of a copy of such declaration as is aforesaid, attested by the seal of some Court empowered by this Act to have the custody of such declarations, shall be held (unless the contrary be proved) to be sufficient evidence, as against the person whose name shall be subscribed to such declaration, that the said person was printer or publisher, or printer and publisher (according as the words of the said declaration may be) of every portion of every periodical work whereof the title shall correspond with the title of the periodical work mentioned in the declaration.

New declaration by persons who have signed declaration, and subsequently ceased to be printers or publishers.

8. Provided always that any person who may have subscribed any such declaration as is aforesaid, and who may subsequently cease to be the printer or publisher of the periodical work mentioned in such declaration, may appear before any Magistrate, and make and subscribe in duplicate the following declaration :—

"I, *A B*, declare that I have ceased to be the printer [*or* publisher, *or* printer and publisher] of the periodical work entitled——."

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* In s. 6, the words quoted have been substituted for the words "other Court within the local limits of whose ordinary original civil jurisdiction."—See Act X. of 1890, s. 3.

Each original of the latter declaration shall be authenticated by the signature and seal of the Magistrate before whom the said latter declaration shall have been made, and one original of the said latter declaration shall be filed along with each original of the former declaration.

Authentication and filing.

The officer in charge of each original of the latter declaration shall allow any person applying to inspect that original on payment of a fee of one rupee, and shall give to any person applying a copy of the said latter declaration attested by the seal of the Court having custody of the original on payment of a fee of two rupees.

Inspection and supply of copies.

In all trials in which a copy, attested as is aforesaid, of the former declaration shall have been put in evidence, it shall be lawful to put in evidence a copy, attested as is aforesaid, of the latter declaration, and the former declaration shall not be taken to be evidence that the declarant was, at any period subsequent to the date of the latter declaration, printer or publisher of the periodical work therein mentioned.

Putting copy in evidence.

PART III.*

DELIVERY OF BOOKS.

9. Printed or lithographed copies of the whole of every book which shall be printed or lithographed in British India after this Act shall come into force, together with all maps, prints, or other engravings belonging thereto, finished and coloured in the same manner as the best copies of the same, shall, notwithstanding any agreement (if the book be published) between the printer and publisher thereof, be delivered by the printer at such place and to such officer as the Local Government shall, by notification in the official Gazette, from time to time direct, and free of expense to the Government as follows, that is to say :—

Copies of books printed after commencement of Act to be delivered gratis to Government.

(*a*) in any case, within one calendar month after the day on which any such book shall first be delivered out of the press, one such copy, and

(*b*) if within one calendar year from such day the Local Government shall require the printer to deliver other such copies not exceeding two in number, then within one calendar month after the day on which any such requisition shall be made by the Local Government on the printer, another such copy, or two other such copies as the Local Government may direct,

the copies so delivered being bound, sewed, or stitched together and upon the best paper on which any copies of the book shall be printed or lithographed.

The publisher or other person employing the printer shall, at a reasonable time before the expiration of the said month, supply him with all maps, prints, and engravings, finished and coloured as aforesaid, which may be necessary to enable him to comply with the requirements aforesaid.

Nothing in the former part of this section shall apply to—

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* Part III. has been substituted by Act X. of 1890, s. 4,

Act XXV. of 1867

(i) any second or subsequent edition of a book in which edition no additions or alterations either in the letter-press or in the maps, prints, or other engravings belonging to the book have been made, and a copy of the first or some preceding edition of which book has been delivered under this Act, or

(ii) any periodical work published in conformity with the rules laid down in section 5 of this Act.

Receipt for copies delivered under last foregoing section.

10. The officer to whom a copy of a book is delivered under the last foregoing section shall give to the printer a receipt in writing therefor.

Disposal of copies delivered under section 9.

11. The copy delivered pursuant to clause (*a*) of the first paragraph of section 9 of this Act shall be disposed of as the Local Government shall from time to time determine.

Any copy or copies delivered pursuant to clause (*b*) of the said paragraph shall be transmitted to the British Museum or the Secretary of State for India, or to the British Museum and the said Secretary of State as the case may be.

PART IV.

PENALTIES.

Penalty for printing contrary to rule in section 3.

12. Whoever shall print or publish any book or paper otherwise than in conformity with the rule contained in section 3 of this Act shall, on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees, or by simple imprisonment for a term not exceeding two years, or by both.

Penalty for keeping press without making declaration required by section 4.

13. Whoever shall keep in his possession any such press as aforesaid without making such a declaration as is required by section 4 of this Act shall, on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees, or by simple imprisonment for a term not exceeding two years, or by both.

Punishment for making false statement.

14. Any person who shall, in making any declaration under the authority of this Act, make a statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall, on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees, and imprisonment for a term not exceeding two years.

Penalty for printing or publishing periodicals without conforming to rules.

15. Whoever shall print or publish any such periodical work as is hereinbefore described without conforming to the rules hereinbefore laid down, or whoever shall print or publish, or shall cause to be printed or published, any such periodical work, knowing that the said rules have not been observed with respect to that work, shall, on conviction before a Magistrate, be punished with fine not exceeding five thousand rupees, or imprisonment for a term not exceeding two years, or both.

16.* If any printer of any such book as is referred to in section 9 of this Act shall neglect to deliver copies of the same pursuant to that section, he shall, for every such default, forfeit to the Government such sum, not exceeding fifty rupees, as a Magistrate having jurisdiction in the place where the book was printed may, on the application of the officer to whom the copies should have been delivered, or of any person authorized by that officer in this behalf, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum, such further sum as the Magistrate may determine to be the value of the copies which the printer ought to have delivered.

Penalty for not delivering books or not supplying printer with maps.

If any publisher or other person employing any such printer shall neglect to supply him, in the manner prescribed in the second paragraph of section 9 of this Act, with the maps, prints, or engravings which may be necessary to enable him to comply with the provisions of that section, such publisher or other person shall, for every such default, forfeit to the Government such sum, not exceeding fifty rupees, as such a Magistrate as aforesaid may, on such an application as aforesaid, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum, such further sum as the Magistrate may determine to be the value of the maps, prints, or engravings which such publisher or other person ought to have supplied.

17.* Any sum forfeited to the Government under the last foregoing section may be recovered under the warrant of the Magistrate determining the sum, or of his successor in office, in the manner authorized by the Code of Criminal Procedure for the time being in force, and within the period prescribed by the Indian Penal Code for the levy of a fine.

Recovery of forfeitures and disposal thereof and of fines.

All fines or forfeitures under this Part of this Act shall, when recovered, be disposed of as the Local Government shall from time to time direct.

PART V.

REGISTRATION OF BOOKS.

18. There shall be kept at such office, and by such officer as the Local Government shall appoint in this behalf, a book to be called a Catalogue of Books printed in British India, wherein shall be registered a memorandum of every book which shall have been delivered "pursuant to clause (*a*) of the first paragraph of section 9" of this Act.†

Registration of memoranda of books.

Such memorandum shall (so far as may be practicable) contain the following particulars (that is to say):—

Contents of memorandum.

(1) the title of the book and the contents of the title page, with a translation into English of such title and contents, when the same are not in the English language:

(2) the language in which the book is written:

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* Ss. 16 and 17 have been substituted by Act X. of 1890, s. 5.

† In s. 18, the words, letter, and figure quoted have been substituted for the words and figure "pursuant to section 9."—See Act X. of 1890, s. 6.

Act XXV. of 1867.

(3) the name of the author, translator, or editor of the book, or any part thereof:

(4) the subject:

(5) the place of printing, and the place of publication:

(6) the name or firm of the printer, and the name or firm of the publisher:

(7) the date of issue from the press or of the publication:

(8) the number of sheets, leaves, or pages:

(9) the size:

(10) the first, second, or other number of the edition:

(11) the number of copies of which the edition consists:

(12) whether the book is printed or lithographed:

(13) the price at which the book is sold to the public: and

(14) the name and residence of the proprietor of the copyright or of any portion of such copyright.

Registration of memorandum.

Such memorandum shall be made and registered in the case of each book as soon as practicable after the delivery of the "copy thereof pursuant to clause (*a*) of the first paragraph of section 9."*

Effect of registration.

Act XX. of 1847 applied.

Every registration under this section shall, upon payment of the sum of two rupees to the officer keeping the said catalogue,† be deemed to be an entry in the book of registry kept under Act No. XX. of 1847 (*for the encouragement of learning in the Territories subject to the Government of the East India Company, by defining, and providing for the enforcement of the right called Copyright therein*); and the provisions contained in that Act as to the said book of registry shall apply *mutatis mutandis* to the said catalogue.

Publication of memoranda registred.

Sending copies.

19. The memoranda registered during each quarter in the said catalogue shall be published in the local Gazette as soon as may be after the end of such quarter, and a copy of the memoranda so published shall be sent to the said Secretary of State and to the Secretary to the Government of India in the Home Department respectively.

PART VI.

MISCELLANEOUS.

Power to make rules.

20. The Local Government shall have power to make such rules as may be necessary or desirable for carrying out the objects of this Act, and from time to time to repeal, alter, and add to such rules.‡

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* In s. 18, the words, letter, and figure quoted have been substituted for the words "copies thereof in manner aforesaid."—See Act X. of 1890, s. 6.

† All such books as become the property of Government for educational purposes are exempted from this payment.—Home Department, No. 4823, dated 21st October 1869, *Gazette of India*, Oct. 23, 1869, p. 400.

‡ Rules have been made under this section by the—

Madras Govt., see *Fort Saint George Gazette*, dated 27th September 1867, p. 749.

Publication.

All such rules, and all repeals and alterations thereof, and additions thereto, shall be published in the local Gazette.

Power to exclude any class of books from operation of Act.

21. The Governor-General of India in Council may, by notification in the *Gazette of India*, exclude any class of books from the operation of the whole or any part or parts of this Act.*

22. [*Repealed by Act X. of 1890, s. 7.*]

Bombay Govt., see *Bombay Govt. Gazette*, dated 6th February 1868, p. 93.
" ditto ditto dated 20th July 1871, p. 783.
Bengal Govt., see *Calcutta Gazette*, dated 3rd July 1867, p. 1137.
N.-W. P. Govt., see *Govt. Gazette, N.-W. P.*, dated 15th May 1867, pp. 327—29.
Panjáb Govt., see *Govt. Gazette, Panjáb*, dated 20th June 1867, p. 531.
Chief Commr., Oudh, see *Govt. Gazette, Oudh*, dated 26th July 1873, p. 8.
" Central Provs., see *Central Provs. Gazette*, dated 13th July 1867, Supp.
" British Burma, see *British Burma Gazette*, dated 9th October 1875, Part II., pp. 189, 190.

* "By virtue of the power vested in the Governor-General in Council by s. 21 of Act XXV. of 1867, entitled 'An Act for the regulation of Printing-presses and Newspapers, for the preservation of copies of books printed in British India, and for the registration of such books,' His Excellency in Council is pleased to declare that the following publications are exempted from the provisions of the said Act :—

1.—[*Cancelled.* Home Department, No. 3276, dated 16th August 1872, *Gazette of India*, 17th August 1872, Part I., p. 777.]
2.—Acts of the Legislative Councils without notes or commentaries.
3.—Price-lists and tradesmen's circulars.
4.—Catalogues of books and other articles, auctioneers' notices, and advertisements.
5.—Play-bills, comprising advertisements of theatrical and musical entertainments.
6.—Decisions of Courts of law without notes or commentaries.
7.—Petitions and appeals addressed to constituted authority under the provisions of law.
8.—Testimonials of private individuals or public officers.
9.—Annual reports of schools, banks, societies, and firms.
10.—Almanacs and calendars.
11.—Labels affixed to articles of commerce."—Home Department, No. 5604, dated 21st December 1871, *Gazette of India*, 23rd December, 1871, p. 979.

Act XXXII. of 1867.

ACT XXXII. OF 1867.*

RECEIVED THE G.-G.'S ASSENT ON THE 18TH JULY 1867.

An Act to enable the Governor-General of India in Council to delegate to a Chief Commissioner any power conferred on a Local Government by an Act of the Governor-General of India in Council.

Preamble.

WHEREAS it is expedient to enable the Governor-General of India in Council to delegate to any of the Chief Commissioners of Oudh, the Central Provinces, and British Burma,† any power conferred on the Governor-General in Council as the Local Government of the territories under the administration of such Commissioner by any Act of the said Governor-General in Council; It is hereby enacted as follows:—

Governor-General in Council empowered to delegate to Chief Commissioners certain power.

1‡. It shall be lawful for the Governor-General of India in Council, by a notification published in the *Gazette of India*, to delegate to the Chief Commissioner of Oudh, the Central Provinces, or British Burma,† as the case may be, all or any of the powers heretofore or hereafter conferred by any Act of the Governor-General of India in Council on the Governor-General of India in Council as the Local Government of the territories under the administration of such Chief Commissioner; and all acts done by the Chief Commissioner, to whom any such power shall have been delegated as aforesaid, in exercise of the same power, shall be as valid as if they had been done by the said Governor-General in Council.

Short title.

2. This Act may be called "The Chief Commissioners' Powers Act."

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*Act XXXII. of 1867 has been declared in force in Upper Burma (except the Shan States).—See Act XX. of 1886, Sch. II., Pt. I.

† The references to British Burma should now be read as referring to Lower Burma.—See Act XX. of 1886, s. 4. The Chief Commissioner is now Chief Commissioner of Burma.—See Proclamation, dated Sept., 25, 1886, in *Gazette of India*, 1886, Pt. I., p. 539.

‡ Under s. 1 the following powers have been delegated to the Chief Commissioner of Burma:—

(*a*) the powers of the Governor-General in Council under Act XXX. of 1852 (*for the naturalization of Aliens*).—*Gazette of India*, June 20, 1874, p. 351.

(*b*) the powers of the Local Government under Act I. of 1859 (*for the amendment of the law relating to Merchant Seamen*).—*Gazette of India*, March 22, 1873, p. 236.

(*c*) the powers of the Local Government under Act V. of 1861 (*for the regulation of Police*), except s. 4.—*Gazette of India*, March 7, 1868, p. 358.

Note.—In Acts of the Governor-General in Council passed after Jan. 3, 1868, the expression "Local Government" includes a "Chief Commissioner."—See Act I. of 1868, s. 2 (*10*).

ACT I. OF 1868.*

RECEIVED THE G.-G.'S ASSENT ON THE 3RD JANUARY 1868.

An Act for shortening the language used in Acts of the Governor-General of India in Council and for other purposes.

Preamble.

WHEREAS it is expedient to shorten the language used in Acts† made by the Governor-General of India in Council, and to make certain provisions relating to such Acts; It is hereby enacted as follows:—

Short title.

1. This Act may be cited as "The General Clauses Act, 1868."

Interpretation-clause.

2. In this Act and in all Acts made by the Governor-General of India in Council after this Act shall have come into operation, unless there be something repugnant in the subject or context,—

(1.) Words importing the masculine gender shall be taken to include females;

(2.) Words in the singular shall include the plural, and *vice versâ*;

(3.) "Person" shall include any company, or association, or body of individuals, whether incorporated or not;

(4.) "Year" and "month" shall respectively mean a year and month reckoned according to the British calendar;

(5.) "Immoveable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;

(6.) "Moveable property" shall mean property of every description, except immoveable property;

(7.) "Her Majesty" shall include Her heirs and successors to the Crown;

(8.) "British India" shall mean the territories for the time being vested in Her Majesty by the Statute 21 & 22 Vic., cap. 106 (*an Act for the better government of India*);‡

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*Act I. of 1868 has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886

It is included in the Schedule to the Santal Parganas Laws Regulation, III. of 1886.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum.—See *Gazette of India*, 22 October, 1881, Pt. I., p. 504.

† The provisions of this Act apply now also to Regulations which receive the assent of the Governor-General under the Statute 33 Vic., c. 3, s. 1, after the 14th January 1887. —See Act I. of 1887, s. 10.

‡ In cl. 8, the words, "other than the Settlement of Prince of Wales's Island, Singapore, and Malacca," have here been omitted, having been repealed by Act XII. of 1891.

Act I. of 1868.

(9.) "Government of India" shall denote the Governor-General of India in Council, or, during the absence of the Governor-General of India from his Council, the President in Council, or the Governor-General of India alone, as regards the powers which may be lawfully exercised by them or him respectively;

(10.) "Local Government" shall mean the person authorized by law to administer executive government in the part of British India in which the Act containing such expression shall operate, and shall include a Chief Commissioner;

(11.) "High Court" shall mean the highest Civil Court of appeal in such part;

(12.) "District Judge" shall mean the Judge of a principal Civil Court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction;

(13.) "Magistrate" shall include all persons exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure;*

(14.) "Barrister" shall mean a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland;

(15.) "Section" shall denote a section of the Act in which the word occurs;

(16.) "Will" shall include a codicil and every writing making a voluntary posthumous distribution of property;

(17.) "Oath," "swear," and "affidavit," shall include affirmation, declaration, affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing;

(18.) "Imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code;

(19.) And in the case of any one whose personal law permits adoption, "son" shall include an adopted son, and "father" an adoptive father.

3. In all Acts made by the Governor-General of India in Council after this Act shall have come into operation—

Revival of repealed enactments.

(1) for the purpose of reviving, either wholly or partially, a Statute, Act, or Regulation wholly or partially† repealed, it shall be necessary expressly to state such purpose;

Commencement of time.

(2) for the purpose of excluding the first in a series of days or any other period of time, it shall be sufficient to use the word "from;"

Termination of time.

(3) for the purpose of including the last in a series of days or any other period of time, it shall be sufficient to use the word "to;"

Official chiefs and subordinates.

(4) for the purpose of expressing that a law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully executing the duties of such office in the place of their superior, it shall be sufficient to prescribe the duty of the superior;

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* See Act X. of 1882, s. 3.

† The words "wholly or partially" are to be deemed to have been inserted here from the commencement of the Act.—See Act I. of 1887, s. 9.

(5) for the purpose of indicating the relation of a law to the successors of any functionaries, or of corporations having perpetual succession, it shall be sufficient to express its relation to the functionaries or corporations; and

Successors.

(6) for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, it shall be sufficient to mention the official title of the officer at present executing such functions, or that of the officer by whom the functions are commonly executed.

Substitution of functionaries.

4. Whenever, by any Act or Regulation now in force or hereafter to be in force, any duty of customs or excise, or in the nature thereof, is leviable on any given quantity, by weight, measure, or value, of any goods or merchandise, a like duty shall be leviable according to the same rate on any greater or less quantity.

Duty may be taken *pro rata*.

5. The provisions of sections 63 to 70, both inclusive, of the Indian Penal Code, and of sections 386, 387, and 389* of the Code of Criminal Procedure, shall apply to all fines imposed under the authority of any Act hereafter to be passed, unless such Act shall contain an express provision to the contrary.

Recovery of fines.

6. The repeal of any Statute, Act, or Regulation shall not affect anything done, or any offence committed or any fine or penalty incurred, or any proceedings† commenced, before the repealing Act shall have come into operation.

Matters done under enactment before its repeal unaffected.

Judicial notice to be taken of Acts and Regulations.

7. [*Repealed by Act I. of 1872.*]

Recitals in Acts to be *prima-facie* evidence of truth of fact recited.

8. [*Repealed by Act I. of 1872.*]

ACT IV. OF 1868.‡

RECEIVED THE G.-G.'S ASSENT ON THE 14TH FEBRUARY 1868.

An Act to exempt certain villages in the Bombay Presidency from the operation of the Regulations and Acts in force in that Presidency.

WHEREAS the villages mentioned in the schedule to this Act have, by virtue of the enactments hereinafter specified, been brought under the operation of the Regulations and Acts in force in the Presidency of Bombay; and whereas it is expedient to exempt such villages from the operation of the Regulations and Acts aforesaid; It is hereby enacted as follows:—

Preamble.

1. So much of Regulation XXIX. of 1827 of the Bombay Code, and of Act No. VI. of 1842 of the Governor-General of India in Council, and of Act No. III. of 1863 of the Governor of Bombay in Council, as relates to the said villages, is hereby repealed.

Repeal of enactments.

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* See now s. 386 *et seq.*, Act X. of 1882.

† This includes a suit in which a decree has been given.—6 Bom. H. C. R., A. C. J., 169.

‡ Act IV. of 1868 has been repealed, except in the Scheduled Districts, by the Scheduled Districts Act (XIV. of 1874).

Act V. of 1868.

SCHEDULE.

NAME OF VILLAGE.	DISTRICT.	Law by which each village was brought under the Regulations and Acts of the Presidency of Bombay.
1. The Pant Sachiv's village of Apti, taraf Hirdas, Maval... ...	Puna ...	Bombay Regulation XXIX. of 1827.
2, 3, 4. The Pant Sachiv's villages of Vátár, Bhamburdi, and Gunand in that part of the tarafs of Nir Thadi and Sirval which lies north of the Nirá river.		
5. The Daphle's village of Muchandi in pargana Jath.	Belgaum...	Act VI. of 1842.
6. The Sanglikár's village of Dorli in karyát Savárdá	Sattárá ...	Bombay Act III. of 1863.
7. The Sanglikár's village of Borgaon in karyát Digráj		
8. The Mirajkrá's village of Dupat Borgaon in karyát Dudgaon ...		
9. The village of Sangám Mahuli, taraf Vandan, belonging to the Pant Pratinidhi		
10. The village of Kinhi, Sammat Koregon, belonging to the Pant Pratinidhi		

ACT V. OF 1868.

RECEIVED THE G.-G.'S ASSENT ON THE 13TH MARCH 1868.

An Act to enable the Governor of Bombay in Council to delegate to the Commissioner in Sindh certain of the powers of a Local Government.

1. It shall be lawful for the Governor of Bombay in Council, by a notification published in the *Bombay Government Gazette*, to delegate to the Commissioner in Sindh all or any of the powers conferred on the said Governor in Council, as the Local Government of the Province of Sindh, by any of the Bombay Regulations or by any Act of the Governor-General of India in Council solely applicable to the Presidency of Bombay, or by any Act passed heretofore or hereafter by the Governor of Bombay in Council, or by any of the Acts of the Governor-General of India in Council mentioned in the schedule to this Act.

Power to delegate to Commissioner in Sindh certain powers of Local Government.

2. It shall be lawful for the Governor of Bombay in Council, with the consent of the Governor-General of India in Council, to delegate to the Commissioner in Sindh all or any of the powers heretofore or hereafter conferred by any Act of the Governor-General of India in Council on the Governor of Bombay in Council as the Local Government of the Province of Sindh.

Power to delegate, with consent of Governor-General, to Commissioner in Sindh certain powers of Local Government.

Validation of acts of Commissioner.

3. All acts done by the Commissioner in Sindh under the authority of any power so delegated shall be as valid as if they had been done by the Governor of Bombay in Council.

Act XXIV. of 1868.

SCHEDULE.*

Act XXVI. of 1850 (to enable improvements to be made in towns).

"The Foreign Jurisdiction and Extradition Act, 1879."†

Act XXV. of 1861 (for simplifying the procedure of the Courts of Criminal Judicature not established by Royal Charter).

Act VI. of 1863 (to consolidate and amend the laws relating to the administration of the Department of Sea-customs in India).

"The Indian Forest Act, 1878."†

ACT XXIV. OF 1868.‡

RECEIVED THE G.-G.'S ASSENT ON the 1ST OCTOBER 1868.

An Act to prohibit the practice of inoculation in Kumáon and Garhwál.

Preamble.

WHEREAS it is expedient to prohibit the practice of inoculation with the small-pox in the districts of Kumáon and Garhwál; It is hereby enacted as follows:—

Penalty for inoculating.

1. Whoever produces or attempts to produce in any person by inoculation with variolous matter, or by wilful exposure to variolous matter, or to anything impregnated therewith, or who wilfully, by any other means, produces the disease of small-pox in any person, shall be liable, on conviction before a Magistrate, to imprisonment for a term not exceeding three months, or to fine not exceeding two hundred rupees, or to both.

Penalty on inoculated person entering place to which Act extends.

2. If any person having been inoculated with the small-pox in a place to which this Act does not extend, shall afterwards enter any place to which this Act extends, before the date of forty days from the date of such inoculation, or without a certificate from a qualified medical officer that such person is no longer likely to cause contagion, such person shall be liable, on conviction before a Magistrate, to imprisonment for a period not exceeding three months, or to a fine not exceeding two hundred rupees, or to both.

Reward to informer.

3. Whenever an offender is sentenced to pay a fine under this Act, the convicting Magistrate may award any portion not exceeding one-half of such fine to the person on whose information the offender has been convicted.

Extent of Act.

4. This Act extends only to the districts of Kumáon and Garhwál.

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* The Schedule, so far as it relates to Act XXVI. of 1850, has been repealed by Act XII. of 1891, Sch. I.

† The words quoted have been substituted by Act XII. of 1891, Sch. II.

‡ Act XXIV. of 1868 has been extended to the Tarái Parganas by notification under the Scheduled Districts Act (XIV. of 1874).

Act I. of 1869.

ACT I. OF 1869.*

THE OUDH ESTATES ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 12TH JANUARY 1869.

An Act to define the Rights of Taluqdárs and Others in certain Estates in Oudh, and to regulate the Succession thereto.

Preamble.

WHEREAS, after the re-occupation of Oudh by the British Government in the year 1858, the proprietary right in divers estates in that province was, under certain conditions, conferred by the British Government upon certain taluqdárs and others; and whereas doubts may arise as to the nature of the rights of the said taluqdárs and others in such estates, and as to the course of succession thereto; and whereas it is expedient to prevent such doubts, and to regulate such course, and to provide for such other matters connected therewith as are hereinafter mentioned; It is hereby enacted as follows:—

I.—Preliminary.

Short title. Extent of Act.

1. This Act may be cited as "The Oudh Estates Act, 1869," and shall extend only to the estates hereinafter referred to.

Interpretation-clause.

2. In this Act, unless there be something repugnant in the subject or context—

"Transfer" means an alienation *inter vivos*:

"Will" means the legal declaration of the intentions of the testator with respect to his property affected by this Act, which he desires to be carried into effect after his death:

"Codicil" means an instrument made in relation to a will, and explaining, altering, or adding to its dispositions; it is considered as forming an additional part of the will:

"Signed" applies to the affixing of a mark:

"Registered"* means registered according to the provisions of the rules relating to the registration of assurances for the time being in force in Oudh:

"Minor" means any person who shall not have completed the age of eighteen years; and "minority" means the status of such person:

"Taluqdár" means any person whose name is entered in the first of the lists mentioned in section 8:

"Grantee" means any person upon whom the proprietary right in an estate has been conferred by a special grant of the British Government, and whose name is entered in the fifth or sixth of the lists mentioned in section 8:

"Estate" means the taluqa or immoveable property acquired or held by a taluqdár or grantee in the manner mentioned in section 3, section 4, or section 5, or the immoveable property conferred by a special grant of the British Government upon a grantee:

"Heir" means a person who inherits property otherwise than as a widow, under the special provisions of this Act; and "legatee" means a person to whom property is bequeathed under the same provisions:

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* For a new definition of the word "registered," see Act X. of 1885, s. 1.

Words expressing relationship denote only legitimate relatives, but apply to children in the womb who are afterwards born alive. Act I. of 1869.

II.—Rights and Liabilities of Taluqdárs and Grantees.

Taluqdárs to have heritable and transferable rights in their estates.

3. Every taluqdár with whom a summary settlement of the Government revenue was made between the first day of April 1858 and the tenth day of October 1859, or to whom, before the passing of this Act and subsequently to the first day of April 1858, a taluqdári sanad has been granted,

shall be deemed to have thereby acquired a permanent, heritable, and transferable right in the estate comprising the villages and lands named in the list attached to the agreement or kabúliyat executed by such taluqdár when such settlement was made,

or which may have been or may be decreed to him by the Court of an officer engaged in making the first regular settlement of the province of Oudh, such decree not having been appealed from within the time limited for appealing against it, or, if appealed from, having been affirmed,

subject to all the conditions affecting the taluqdár contained in the orders passed by the Governor-General of India on the tenth and nineteenth days of October 1859, and re-published in the first schedule hereto annexed, and subject also to all the conditions contained in the sanad under which the estate is held.

Subject to certain conditions.

Rights and liabilities of persons named in second schedule.

4. Every person whose lands the proclamation issued in Oudh in the month of March 1858 by order of the Governor-General of India specially exempted from confiscation, and whose names are contained in the second schedule hereto annexed, shall be deemed to possess, in the lands for which such person executed a kabúliyat between the first day of April 1858 and the first day of April 1860, the same right and title which he would have possessed thereto if he had acquired the same in the manner mentioned in section 3; and he shall be deemed to hold the same subject to all the conditions affecting taluqdárs which are referred to in the said section, and to be a taluqdár for all the purposes of this Act.

Grantees' rights and liabilities.

5. Every grantee shall possess the same rights, and be subject to the same conditions in respect of the estate comprised in his grant as a taluqdár possesses and is subject to, under section 3, in respect of his estate.

Saving of certain redemption-suits.

6. Nothing in sections 3, 4, and 5, or in the said orders, or in any sanad, shall be deemed to bar a suit for redemption,

(*a*) where the instrument of mortgage was executed on or after the thirteenth day of February 1844, and fixed no term within which the property comprised therein might be redeemed, or

(*b*) where the instrument of mortgage fixed a term within which the property comprised therein might be redeemed, and such term did not expire before the thirteenth day of February 1856.

Heirlooms.

7. If a taluqdár or grantee, or any heir or legatee of a taluqdár or grantee, desire that any elephants, jewels, arms, or other articles of moveable property belonging to him, shall devolve along with his estate, he shall take an inventory of such articles. Such

Act I. of 1869.

inventory shall be signed by him and deposited in the office of the Deputy Commissioner of the district wherein such estate or the greater part thereof is situate; and thereupon such of the said articles as shall not have been transferred shall (so far as may be possible) be used and enjoyed by the person who, under or by virtue of this Act, is for the time being in actual possession or in receipt of the rents and profits of the said estate or the greater part thereof, otherwise than as mortgagee or lessee.

III.—Lists of Taluqdárs and Grantees.

Preparation of lists of taluqdárs and grantees.

8. Within six months after the passing of this Act, the Chief Commissioner of Oudh, subject to such instructions as he may receive from the Governor-General of India in Council, shall cause to be prepared six lists, namely:—

First.—A list of all persons who are to be considered taluqdárs within the meaning of this Act;

Second.—A list of the taluqdárs whose estates, according to the custom of the family on and before the thirteenth day of February 1856, ordinarily devolved upon a single heir;

Third.—A list of the taluqdárs, not included in the second of such lists, to whom sanads or grants have been or may be given or made by the British Government up to the date fixed for the closing of such lists, declaring that the succession to the estates comprised in such sanads or grants shall thereafter be regulated by the rule of primogeniture;

Fourth.—A list of the taluqdárs to whom the provisions of section 23 are applicable;

Fifth.—A list of the grantees to whom sanads or grants have been or may be given or made by the British Government, up to the date fixed for the closing of such list, declaring that the succession to the estates comprised in such sanads or grants shall thereafter be regulated by the rule of primogeniture;

Sixth.—A list of the grantees to whom the provisions of section 23 are applicable.

Publication of lists.

9. When the lists mentioned in section 8 shall have been approved by the Chief Commissioner of Oudh, they shall be published in the *Gazette of India*.* After such publication, the first and second of the said lists shall not, except in the manner provided by section 30 or section 31, as the case may be, be liable to any alteration in respect of any names entered therein.

Supplementary list.

If, at any time after the publication of the said lists, it appears to the Governor-General of India in Council that the name of any person has been wrongly omitted from, or wrongly entered in, any of the said lists, the said Governor-General in Council may order the name to be inserted in the proper list, and such name shall be published in the *Gazette of India* in a supplementary list, and such person shall be treated in all respects as if his name had been from the first inserted in the proper list.

None but persons named in lists to be deemed taluqdárs or grantees.

10. No persons shall be considered taluqdárs or grantees within the meaning of this Act other than the persons named in such original or supplementary lists as aforesaid. The Courts shall take judicial notice of the said lists,

* See *Gazette of India*, July 31, 1869, pp. 150-162: *ibid*, June 10, 1876, pp. 286, 287.

and shall regard them as conclusive evidence that the persons named therein are such taluqdárs or grantees. Act I. of 1869.

IV.—Powers of Taluqdárs and Grantees to transfer and bequeath.

Taluqdárs and grantees may transfer and bequeath.

11. Subject to the provisions of this Act, and to all the conditions under which the estate was conferred by the British Government, every taluqdár and grantee, and every heir and legatee of a taluqdár and grantee, of sound mind and not a minor, shall be competent to transfer the whole or any portion of his estate, or of his right and interest therein, during his lifetime, by sale, exchange, mortgage, lease, or gift, and to bequeath by his will to any person the whole or any portion of such estate, right, and interest.

A married woman may make a bequest under this Act of any property which she could alienate by her own act during her life.

Persons who are deaf or dumb or blind are not thereby incapacitated for making a transfer or bequest under this Act if they are able to know what they do by it.

One who is ordinarily insane may make a transfer or bequest under this Act during an interval in which he is of sound mind.

No person can make a transfer or bequest under this Act while he is in such a state of mind, whether from drunkenness, or from illness, or from any other cause, that he does not know what he is doing.

A transfer and a will, or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the transferrer or testator, is void.

Rule against perpetuity.

12. No transfer or bequest under this Act shall be valid whereby the vesting of the thing transferred or bequeathed may be delayed beyond the lifetime of one or more persons living at the decease of the transferee or testator and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing transferred or bequeathed is to belong.

Restriction as to donees and legatees.

13. No taluqdár or grantee, and no heir or legatee of a taluqdár or grantee, shall have power to give or bequeath his estate, or any portion thereof, or any interest therein, to any person not being either—

(1) a person who, under the provisions of this Act, or under the ordinary law to which persons of the donor's or testator's tribe and religion are subject, would have succeeded to such estate or to a portion thereof, or to an interest therein, if such taluqdár or grantee, heir or legatee, had died intestate, or

(2) a younger son of the taluqdár or grantee, heir or legatee, in case the name of such taluqdár or grantee appears in the third or the fifth of the lists mentioned in section 8,

except by an instrument of gift or a will executed and attested, not less than three months before the death of the donor or testator, in manner herein provided in the case of a gift or will, as the case may be, and registered within one month from the date of its execution.

Act I. of 1869.

V.—Transfers and Bequests.

Transfers and bequests to taluqdárs or heirs.

14. If any taluqdár or grantee shall heretofore have transferred or bequeathed, or if any taluqdár or grantee, or his heir or legatee, shall hereafter transfer or bequeath, the whole or any portion of his estate to another taluqdár or grantee, or to such younger son as is referred to in section 13, clause *2*, or to a person who would have succeeded according to the provisions of this Act to the estate or to a portion thereof if the transferor or testator had died without having made the transfer and intestate, the transferee or legatee and his heirs and legatees shall have the same rights and powers in regard to the property to which he or they may have become entitled under or by virtue of such transfer or bequest, and shall hold the same subject to the same conditions and to the same rules of succession as the transferor or testator.

Transfers and bequests to persons out of line of succession.

15. If any taluqdár or grantee shall heretofore have transferred or bequeathed, or if any taluqdár or grantee, or his heir or legatee, shall hereafter transfer or bequeath, to any person, not being a taluqdár or grantee, the whole or any portion of his estate, and such person would not have succeeded according to the provisions of this Act to the estate or to a portion thereof if the transferor or testator had died without having made the transfer and intestate, the transfer of and succession to the property so transferred or bequeathed shall be regulated by the rules which would have governed the transfer of and succession to such property if the transferee or legatee had bought the same from a person not being a taluqdár or grantee.

Transfers to be in writing signed and attested.

16. No transfer of any estate, or of any portion thereof, or of any interest therein, made by a taluqdár or grantee, or by his heir or legatee, under the provisions of this Act, shall be valid, unless made by an instrument in writing, signed by the transferor, and attested by two or more witnesses.

Further requisites to validity of gifts *inter vivos*.

17. If any such transfer be made by gift, the gift shall not be valid, unless within six months after the execution of the instrument of gift, the gift be followed by delivery by the donor, or his representative in interest, of possession of the property comprised therein, nor unless the instrument shall have been registered within one month from the date of its execution.

Gifts to religious or charitable uses.

18. No taluqdár or grantee, and no heir or legatee of a taluqdár or grantee, shall have power to give his estate, or any portion thereof, or interest therein, to religious or charitable uses, except by an instrument of gift executed not less than three months before his death, and subject to the provisions contained in section 17.

VI.— Testamentary Succession.

Sections of Succession Act applied to wills of taluqdárs.

19. Sections 49, 50, 51, 54, 55, and 57 to 77 (both inclusive), and sections 82, 83, 85, and 88 to 98 (both inclusive), of the Indian Succession Act (No. X. of 1865), shall apply to all wills and codicils made by any taluqdár or grantee, or by his heir or legatee, under the provisions of this Act, for the purpose of bequeathing to any person his estate, or any portion thereof, or any interest therein: Provided that marriage shall not revoke any such will or codicil: Provided also that nothing herein contained shall affect wills made before the passing of this Act.

In applying the said sections to wills and codicils made under this Act, all words hereinbefore defined, and occurring in such sections, shall (unless there be something repugnant in the subject or context) be deemed to have the same meaning as this Act has attached to such words respectively. Act I. of 1869.

Bequests to religious and charitable uses.

20. No taluqdár or grantee, and no heir or legatee of a taluqdár or grantee, having a child, parent, brother, unmarried sister, or a nephew being the naturally-born son of a brother of such taluqdár or grantee, heir or legatee, shall have power to bequeath his estate or any part thereof or any interest therein exceeding in amount or value the sum of two thousand rupees to religious or charitable uses, except by a will executed not less than three months before his death, and registered within one month from the date of its execution.

VII.—Intestate Succession.

'Son,' 'descendants' 'daughter,' 'brother,' 'widow,' defined.

21. In the next following section, unless where there is something repugnant in the context, the words 'son,' 'descendants,' 'daughter,' and 'brother,' apply only to *najib-ul-tarfain*, and the word 'widow' applies only to a woman belonging to the *ahl-i-brádarí* of her deceased husband.

Special rules of succession to intestate taluqdárs and grantees.

22. If any taluqdár or grantee whose name shall be inserted in the second, third, or fifth of the lists mentioned in section 8, or his heir or legatee, shall die intestate as to his estate, such estate shall descend as follows, namely :—

(1)—to the eldest son of such taluqdár or grantee, heir or legatee, and his male lineal descendants, subject to the same conditions and in the same manner as the estate was held by the deceased ;

(2)—or if such eldest son of such taluqdár or grantee, heir or legatee, shall have died in his lifetime, leaving male lineal descendants, then to the eldest and every other son of such eldest son successively, according to their respective seniorities and their respective male lineal descendants, subject as aforesaid ;

(3)—or if such eldest son of such taluqdár or grantee, heir or legatee, shall have died in his father's lifetime without leaving male lineal descendants, then to the second and every other son of the said taluqdár or grantee, heir or legatee, successively, according to their respective seniorities, and their respective male lineal descendants, subject as aforesaid ;

(4)—or in default of such son or descendants, then to such son (if any) of a daughter of such taluqdár or grantee, heir or legatee, as has been treated by him in all respects as his own son, and to the male lineal descendants of such son, subject as aforesaid ;

(5)—or in default of such son or descendants, then to such person as the said taluqdár or grantee, heir or legatee, shall have adopted by a writing executed and attested in manner required in case of a will, and registered, subject as aforesaid ;

(6)—or in default of such adopted son, then to the eldest and every other brother of such taluqdár or grantee, heir or legatee, successively, according to their respective seniorities, and their respective male lineal descendants, subject as aforesaid ;

Act I. of 1869.

(7)—or in default of any such brother, then to the widow of the deceased taluqdár or grantee, heir or legatee; or, if there be more widows than one, to the widow first married to such taluqdár or grantee, heir or legatee, for her life-time only;

(8)—and upon the death of such widow, then to such son as the said widow shall, with the consent in writing of her deceased husband, have adopted by a writing executed and attested in manner required in case of a will, and registered, subject as aforesaid;

(9)—or on the death of such first-married widow and in default of a son adopted by her with such consent and in such manner as aforesaid, then to the other widow, if any, of such taluqdár or grantee, heir or legatee, next in order of marriage, for her life, and on the death of such other widow, to a son adopted by her with such consent and in such manner as aforesaid; or in default of such adopted son, then to the other surviving widows according to their respective seniorities as widows, for their respective lives, and on their respective deaths, to the sons so adopted by them respectively, and to the male lineal descendants of such sons respectively, subject as aforesaid;

(10)—or in default of any such widow or of any son so adopted by her, or of any such descendant, then to the male lineal descendants, not being *najíb-ul-tarfain*, of such taluqdár or grantee, heir or legatee, successively, according to their respective seniorities and their respective male lineal descendants, whether *najíb-ul-tarfain* or not;

(11)—or in default of any such descendant, then to such persons as would have been entitled to succeed to the estate under the ordinary law to which persons of the religion and tribe of such taluqdár or grantee, heir or legatee, are subject.

Nothing contained in the former part of this section shall be construed to limit the power of alienation conferred by section 11.

General rule of succession to intestate taluqdárs and grantees.

23. Except in the cases provided for by section 22, the succession to all property left by taluqdárs and grantees, and their heirs and legatees, dying intestate, shall be regulated by the ordinary law to which members of the intestate's tribe and religion are subject.

VIII.—Maintenance.

Maintenance of surviving relatives of taluqdárs and grantees.

24. When any taluqdár or grantee, or his heir or legatee, dies leaving him surviving such relatives as are hereinafter mentioned, the person for the time being in the possession of his estate or the rents and profits thereof shall be liable to pay to each of such relatives during his or her life, or for such other period as is hereinafter mentioned, by twelve equal monthly payments, an annuity in accordance with the custom of the country not exceeding such amount as is hereinafter mentioned: Provided that such relative was at the date of the death of the deceased living together with him: Provided also that such relative is and continues to be without any other adequate means of maintenance.

If any part of such estate shall have been transferred or bequeathed by the deceased, the person for the time being in possession of such part, or of the rents and profits thereof, shall be liable to pay proportionate parts of the said annuities during the continuance thereof respectively.

Act I. of 1869.

25. In the case of the grand-parents, parents, and senior widows of the deceased, the maximum amount of the annuity shall be as follows :—

Grand-parents, parents, and senior widows.

(*a*) where the annual revenue payable to Government in respect of the estate is or exceeds 1,50,000 rupees—a sum not exceeding 6,000 rupees :

(*b*) where such revenue is or exceeds 1,00,000 rupees, but is less than 1,50,000 rupees—a sum not exceeding 2,400 rupees :

(*c*) where such revenue is or exceeds 50,000 rupees, but is less than 1,00,000 rupees—a sum not exceeding 1,200 rupees :

(*d*) where such revenue is or exceeds 25,000 rupees, but is less than 50,000 rupees—a sum not exceeding 600 rupees :

(*e*) where such revenue is or exceeds 15,000 rupees, but is less than 25,000 rupees—a sum not exceeding 360 rupees :

(*f*) where such revenue is or exceeds 7,000 rupees, but is less than 15,000 rupees—a sum not exceeding 240 rupees : and

(*g*) where such revenue is less than 7,000 rupees—a sum not exceeding 180 rupees.

In the case of a junior widow of the deceased, the maximum amount of the annuity shall be one-half of the maximum amount to which a senior widow of the deceased would be entitled under the former part of this section.

Junior widows.

26. In the case of brothers and minor sons of the deceased, the maximum amount of the annuity shall be a sum not more than 1,200 rupees.

Brothers and minor sons.

In the case of nephews of the deceased being fatherless minors, the maximum amount of the annuity shall be a sum not more than 600 rupees.

Nephews.

27. In the case of unmarried daughters of the deceased, widows of his sons and brothers, and his widows not of his *ahl-i-brádarí*, the maximum amount of the annuity shall be a sum not more than 360 rupees.

Unmarried daughters, widows of sons and brothers, and inferior widows.

28. Subject to the provisions hereinbefore contained, the said annuities shall continue—

Continuance of annuities.

(*a*) in the case of a minor son or a minor nephew, till he ceases to be a minor ;

(*b*) in the case of a daughter or widow, till she voluntarily leaves the household of the heir or legatee of the deceased, or would, according to the custom of the country, cease to be entitled to maintenance ; and

(*c*) in all other cases, till the annuitant dies.

IX.—Miscellaneous.

29. Every Muhammadan taluqdár, grantee, heir, or legatee, and every widow of a Muhammadan taluqdár or grantee, heir or legatee, with the consent in writing of her deceased husband, shall, for the purposes of this Act, have power to adopt a son whenever, if he or she were a Hindú, he or she might adopt a son.

Muhammadan taluqdárs and grantees empowered to adopt.

Act I. of 1869.

Such power shall be exercisable only by writing executed and attested in manner required by section 19 in case of a will and registered.

Alteration of rules of intestate succession in cases of taluqdárs and grantees named in list 3 or list 5.

30. Any taluqdár or grantee whose name has been entered in the third or fifth of the lists mentioned in section 8, or his heir or legatee, may at any time hereafter, present to the Chief Commissioner of Oudh a declaration in writing, executed and registered in the manner required by this Act for the execution and registration of an instrument of gift, that he is desirous that the succession to his estate shall, in case of his intestacy, cease to be regulated in the manner described in section 22, and that it shall in future be regulated by the ordinary law to which members of his tribe and religion are subject.

On receiving such declaration, the said Chief Commissioner shall cause to be inserted the name of such taluqdár or grantee, heir or legatee, in the fourth or sixth (as the case may be) of the lists mentioned in section 8, and shall cause a note thereof to be made in the proper place in the third or fifth (as the case may be) of the said lists, and the succession to such estate shall thenceforward, in case of intestacy, be regulated in the manner provided by section 23.

Reverter to ordinary law of succession.

31. Any taluqdár or grantee, heir or legatee, may, at any time hereafter, present to the Chief Commissioner of Oudh a declaration in writing, executed and registered in the manner required by this Act for the execution and registration of instruments of gift, that he is desirous that his estate should in future be held subject to the ordinary law of succession to which members of his tribe and religion are subject.

On receiving such declaration, the Chief Commissioner shall cause a note thereof to be made in the proper places in each of the lists mentioned in section 8 in which the name of such taluqdár or grantee, heir or legatee, has been entered, and thenceforward none of the provisions of this Act shall apply to such estate, which shall thenceforward be held subject in all respects to the ordinary law of succession to which members of his tribe and religion are subject.

Saving of rights of creditors.

32. Nothing hereinbefore contained shall affect any right which the creditors of any person making a transfer or bequest under the provisions of this Act would have possessed as against the property comprised in such transfer or bequest if this Act had not been passed.

Awards as to compensation and maintenance.

33. And whereas bodies of taluqdárs have in several cases made awards respecting the provision to be made for certain relatives of taluqdárs, and it is expedient to render such awards legally enforceable, it is hereby further enacted that every such award shall, if approved by the Financial Commissioner of Oudh,* and filed in his Court within six months after the passing of this Act, be enforceable as if a Court of competent jurisdiction had passed judgment according to the award, and a decree had followed upon such judgment.

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* Now the Chief Commissioner of Oudh.—See Notification No. 316, dated Sep. 22, 1871, in *Gazette of India*, 1871, Pt. I., p. 727.

SCHEDULES

FIRST SCHEDULE.

(See section 3.)

I.

From C. BEADON, Esq., *Secretary to the Government of India, Foreign Department, to* C. J. WINGFIELD, Esq., *Chief Commissioner of Oudh—(No. 6268, dated 10th October 1859).*

No. 1091, dated the 4th June.
No. 1377, dated the 15th July.

I AM directed by the Governor-General in Council to acknowledge the receipt of your secretary's letters noted in the margin, relative to the taluqdári settlement of Oudh.

2. His Excellency in Council, agreeing with you as to the expediency of removing all doubts as to the intention of the Government to maintain the taluqdárs in possession of the taluqas for which they have been permitted to engage, is pleased to declare that every taluqdár with whom a summary settlement has been made since the re-occupation of the province, has thereby acquired a permanent hereditary and transferable proprietary right, namely, in the taluqa for which he has engaged, including the perpetual privilege of engaging with the Government for the revenue of the taluqa.

3. This right is, however, conceded, subject to any measure which the Government may think proper to take for the purpose of protecting the inferior zamindárs and village-occupants from extortion, and of upholding their rights in the soil in subordination to the taluqdárs.

4. The Governor-General in Council desires that you will have ready, by His Excellency's arrival at Lakhnau, a list of the taluqdárs upon whom a permanent proprietary right has now been conferred; and that you will prepare sanads to be issued to these taluqdárs at that time. The sanads will be given by, and will run in the name of, the Chief Commissioner, acting under the authority of the Governor-General.

5. I am directed to add that, as regards zamindárs and others, not being taluqdárs, with whom a summary settlement has been made, the orders conveyed in the Limitation Circular No. 31 of the 28th of January, 1859, must not be strictly observed. Opportunity must be allowed at the next settlement to all disappointed claimants to bring forward their claims, and all such claims must be heard and disposed of in the usual manner.

II.

From C. BEADON, Esq., *Secretary to the Government of India, Foreign Department, with the Governor-General, to Chief Commissioner, Oudh — (No. 23, dated 19th October 1859).*

I AM directed by His Excellency the Governor-General to acknowledge the receipt of your demi-official letter of the 15th instant, enclosing a form of sanad to be given to the taluqdárs of Oudh, granting them a full and permanent proprietary right in the taluqas for which they have severally been permitted to engage at the summary settlement.

2. This form of sanad is generally approved, and a revised copy, with some few alterations, is herewith enclosed for adoption and for careful translation into the Hindustani language, in which the sanads will be prepared.

3. The sanads declare that while, on the one hand, the Government has conferred on the taluqdárs and on their heirs for ever the full proprietary right in their respective estates, subject only to the payment of the annual revenue that may be imposed from time to time, and to certain conditions of loyalty and good service, on the other hand, all persons holding an interest in the land under the taluq-

Act I. of 1869.

dárs will be secured in the possession of the subordinate rights which they have heretofore enjoyed.

4. The meaning of this is that, when a regular settlement of the province is made, wherever it is found that zamindars or other persons have held an interest in the soil intermediate between the raiyat and the taluqdár, the amount or proportion payable by the intermediate holder to the taluqdár, and the net jama finally payable by the taluqdár to the Government, will be fixed and recorded after careful and detailed survey and inquiry into each case, and will remain unchanged during the currency of the settlement, the taluqdár being, of course, free to improve his income and the value of his property by the reclamation of waste-lands (unless in cases where usage has given the liberty of reclamation to the zamindar), and by other measures of which he will receive the full benefit at the end of the settlement. Where leases (pattas) are given to the subordinate zamindárs, they will be given by the taluqdár, not by the Government.

5. This being the position in which the taluqdárs will be placed, they cannot, with any show of reason, complain if the Government takes effectual steps to re-establish and maintain in subordination to them the former rights, as those existed in 1855, of other persons whose connexion with the soil is in many cases more intimate and more ancient than theirs; and it is obvious that the only effectual protection which the Government can extend to these inferior holders, is to define and record their rights, and to limit the demand of the taluqdár as against such person during the currency of the settlement to the amount fixed by the Government as the basis of its own revenue-demand.

6. What the duration of the settlement shall be, and what proportion of the rent shall be allowed in each case to zamindárs and taluqdárs, are questions to be determined at the time of settlement.

The Governor-General agrees in your observation that it is a bad principle to create two classes of recognized proprietors in one estate, and it is likely to lead to the alienation of a larger proportion of the land-revenue than if there were only one such class. But whilst the taluqdari tenure, notwithstanding this drawback, is about to be recognized and re-established, because it is consonant with the feelings and traditions of the whole people of Oudh, the zamindari tenure intermediate between the tenures of the taluqdár and the raiyat is not a new creation, and it is a tenure which, in the opinion of the Governor-General, must be protected.

SECOND SCHEDULE.

(See section 4.)

(1.) Dig-Bijay Singh, Raja of Balrampur.

(2.) Rao Hardeo Bakhsh Singh, of Katiari.

(3.) Kashi Parshad, Taluqdár of Sissendi.

(4.) Jhabba Singh, Zamindár of Goral Khera.

(5.) Chandan Lal, Zamindar of Moraon (Baiswara).

ACT IV. OF 1869.*

Act IV. of 1869.

RECEIVED THE G.-G.'S ASSENT ON THE 26TH FEBRUARY 1869.

An Act to amend the law relating to Divorce and Matrimonial Causes in India.

WHEREAS it is expedient to amend the law relating to the divorce of persons professing the Christian religion, and to confer upon certain Courts jurisdiction in matters matrimonial; It is hereby enacted as follows :—

Preamble.

I.—Preliminary.

Short title. Commencement of Act.

1. This Act may be called "The Indian Divorce Act," and shall come into operation on the first day of April 1869.

Extent of Act.

2. This Act shall extend to the whole of British India, and (so far only as regards British subjects within the dominions hereinafter mentioned) to the dominions of Princes and States in India in alliance with Her Majesty.

Extent of power to grant relief generally,

Nothing hereinafter contained shall authorize any Court to grant any relief under this Act, except in cases where the petitioner professes the Christian religion, and resides in India at the time of presenting the petition,

and to make decrees of dissolution

or to make decrees of dissolution of marriage except in the following cases : (*a*) where the marriage shall have been solemnized in India ; or (*b*) where the adultery, rape, or unnatural crime complained of shall have been committed in India ; or (*c*) where the husband has, since the solemnization of the marriage, exchanged his profession of Christianity for the profession of some other form of religion ;

and nullity.

or to make decrees of nullity of marriage except in cases where the marriage has been solemnized in India.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

(1) "High Court" means, in any Regulation province—the Court there established under the Act of the twenty-fourth and twenty-fifth of Victoria, chapter one hundred and four ;

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* Act IV. of 1869 extends to India the principal provisions of 20 & 21 Vic., c. 85, as amended by 22 & 23 Vic., c. 61; 23 & 24 Vic., c. 144, and 29 Vic., c. 32. It also embodies many rulings of Sir Cresswell Cresswell and Lord Penzance.

It has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886.

It is included in the Schedule to the Santál Parganas Laws Regulation, III. of 1886.

The Act has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the district of Singbhum.—See *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504.

It has been extended, under the same Act, to the North-Western Provinces Tarái.—See *Gazette of India*, Sep. 23, 1876, Pt. I., p. 505.

The Limitation Act does not apply to suits under this Act.—See Act XV. of 1877, s. 1.

Act IV. of 1869.

in the territories for the time being subject to the government of the Lieutenant-Governor of the Punjab—the Chief Court of the Punjab ;

in Burma—the Special Court constituted under the Lower Burma Courts Act, 1889,*

and in any other Non-Regulation Province and in any place in the dominions of the Princes and States of India in alliance with Her Majesty—the High Court or Chief Court to whose original criminal jurisdiction the petitioner is for the time being subject, or would be subject if he or she were a European British subject of Her Majesty :

In the case of any petition under this Act, " High Court" is that one of the aforesaid Courts within the local limits of whose ordinary appellate jurisdiction, or of whose jurisdiction under this Act, the husband and wife reside or last resided together :

(2) " District Judge" means, in the Regulation Provinces—a Judge of a principal Civil Court of original jurisdiction ;

in the Non-Regulation Provinces, other than Sindh and the areas for the time being comprised within the local limits of the ordinary civil jurisdiction of the Recorder of Rangoon and of the civil jurisdiction of the Court of the Judge of the Town of Maulmain—a Commissioner of a Division ;*

in Sindh—the Judicial Commissioner of that Province ;*

in the areas aforesaid—the Recorder of Rangoon and the Judge of the Town of Maulmain, respectively ;*

and in any place in the dominions of the Princes and States aforesaid—such officer as the Governor-General of India in Council shall from time to time appoint in this behalf by notification in the *Gazette of India*, and, in the absence of such officer, the High Court in the exercise of its original jurisdiction under this Act :

(3) " District Court" means in the case of any petition under this Act, the Court of the District Judge within the local limits of whose ordinary jurisdiction, or of whose jurisdiction under this Act, the husband and wife reside or last resided together :

(4) " Court" means the High Court or the District Court, as the case may be :

(5) " Minor children" means, in the case of sons of native fathers, boys who have not completed the age of sixteen years, and, in the case of daughters of native fathers, girls who have not completed the age of thirteen years : In other cases it means unmarried children who have not completed the age of eighteen years :

(6) " Incestuous adultery" means adultery committed by a husband with a woman with whom, if his wife were dead, he could not lawfully contract marriage by reason of her being within the prohibited degrees of consanguinity (whether natural or legal) or affinity :

(7) " Bigamy with adultery" means adultery with the same woman with whom the bigamy was committed :

(8) " Marriage with another woman" means marriage of any person, being married, to any other person, during the life of the former wife, whether the second marriage shall have taken place within the dominions of Her Majesty or elsewhere :

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* This clause has been substituted by Act XII. of 1891, s. 97, and Sch. II.

(9) "Desertion" implies an abandonment against the wish of the person charging it: and

Act IV of 1869.

(10) "Property" includes, in the case of a wife, any property to which she is entitled for an estate in remainder or reversion, or as a trustee, executrix, or administratrix; and the date of the death of the testator or intestate shall be deemed to be the time at which any such wife becomes entitled as executrix or administratrix.

II.—Jurisdiction.

Matrimonial jurisdiction of High Courts to be exercised subject to Act. Exception.

4. The jurisdiction now exercised by the High Courts in respect of divorce *a mensâ et toro*, and in all other causes, suits, and matters matrimonial, shall be exercised by such Courts and by the District Courts subject to the provisions in this Act contained, and not otherwise:* except so far as relates to the granting of marriage-licenses, which may be granted as if this Act had not been passed.

Enforcement of decrees or orders made heretofore by Supreme or High Court.

5. Any decree or order of the late Supreme Court of Judicature at Calcutta, Madras, or Bombay sitting on the ecclesiastical side, or of any of the said High Courts sitting in the exercise of their matrimonial jurisdiction, respectively, in any cause or matter matrimonial, may be enforced and dealt with by the said High Courts, respectively, as hereinafter mentioned, in like manner as if such decree or order had been originally made under this Act by the Court so enforcing or dealing with the same.

Pending suits.

6. All suits and proceedings in causes and matters matrimonial, which, when this Act comes into operation, are pending in any High Court, shall be dealt with and decided by such Court, so far as may be, as if they had been originally instituted therein under this Act.

Court to act on principles of English Divorce Court.

7. Subject to the provisions contained in this Act, the High Courts and District Courts shall, in all suits and proceedings hereunder, act and give relief on principles and rules which, in the opinion of the said Courts, are, as nearly as may be, conformable to the principles and rules on which the Court for Divorce and Matrimonial Causes in England for the time being acts and gives relief.†

Extraordinary jurisdiction of High Court.

8. The High Court may, whenever it thinks fit, remove and try and determine as a Court of original jurisdiction any suit or proceeding instituted under this Act in the Court of any District Judge within the limits of its jurisdiction under this Act.

Power to transfer suits.

The High Court may also withdraw any such suit or proceeding, and transfer it for trial or disposal to the Court of any other such District Judge.

Reference to High Court.

9. When any question of law, or usage having the force of law, arises at any point in the proceedings previous to the hearing of any suit under this Act by a District Court or at any subsequent stage of such suit, or in the execution of the decree therein or order thereon,

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* See *Gasper* v. *Gonsalves*, 13 Beng. 112.

† See 4 Beng. O. C. J. 31.

Act IV. of 1869.

the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the case, and refer it, with the Court's own opinion thereon, to the decision of the High Court.

If the question has arisen previous to or in the hearing, the District Court may either stay such proceedings, or proceed in the case pending such reference, and pass a decree contingent upon the opinion of the High Court upon it.

If a decree or order has been made, its execution shall be stayed until the receipt of the order of the High Court upon such reference.

III.—Dissolution of Marriage.

When husband may petition for dissolution.

10. Any husband may present a petition to the District Court or to the High Court, praying that his marriage may be dissolved on the ground that his wife has, since the solemnization thereof, been guilty of adultery.

When wife may petition for dissolution.

Any wife may present a petition to the District Court or to the High Court, praying that her marriage may be dissolved, on the ground that, since the solemnization thereof, her husband has exchanged his profession of Christianity for the profession of some other religion, and gone through a form of marriage with another woman;

or has been guilty of incestuous adultery,

or of bigamy with adultery,

or of marriage with another woman with adultery,

or of rape, sodomy, or bestiality,

or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce *a mensâ et toro*,

or of adultery coupled with desertion, without reasonable excuse, for two years and upwards.

Contents of petition.

Every such petition shall state, as distinctly as the nature of the case permits, the facts on which the claim to have such marriage dissolved is founded.

Adulterer to be co-respondent.

11. Upon any such petition presented by a husband, the petitioner shall make the alleged adulterer a co-respondent to the said petition, unless he is excused from so doing on one of the following grounds, to be allowed by the Court:—

(1.)—That the respondent is leading the life of a prostitute,* and that the petitioner knows of no person with whom the adultery has been committed;

(2.)—That the name of the alleged adulterer is unknown to the petitioner, although he has made due efforts to discover it;

(3.)—That the alleged adulterer is dead.

Court to be satisfied of absence of collusion.

12. Upon any such petition for the dissolution of a marriage, the Court shall satisfy itself, so far as it reasonably can, not only as to the facts alleged, but also whether or not the petitioner has been in any manner accessory to, or conniving at, the going through of the said form of marriage, or the adultery, or has condoned the same, and shall also inquire into any counter-charge which may be made against the petitioner.

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* *Roe* v. *Roe*, 3 Beng. App. 10.

Act IV. of 1869.

Dismissal of petition.

13. In case the Court, on the evidence in relation to any such petition, is satisfied that the petitioner's case has not been proved, or is not satisfied that the alleged adultery has been committed,

or finds that the petitioner has, during the marriage, been accessory to, or conniving at, the going through of the said form of marriage or the adultery of the other party to the marriage, or has condoned the adultery complained of,

or that the petition is presented or prosecuted in collusion with either of the respondents,

then and in any of the said cases the Court shall dismiss the petition.

When a petition is dismissed by a District Court under this section, the petitioner may, nevertheless, present a similar petition to the High Court.

Power to Court to pronounce decree for dissolving marriage.

14. In case the Court is satisfied on the evidence that the case of the petitioner has been proved,

and does not find that the petitioner has been in any manner accessory to, or conniving at, the going through of the said form of marriage, or the adultery of the other party to the marriage, or has condoned the adultery complained of,

or that the petition is presented or prosecuted in collusion with either of the respondents,

the Court shall pronounce a decree declaring such marriage to be dissolved in the manner and subject to all the provisions and limitations in sections 16 and 17 made and declared :

Provided that the Court shall not be bound to pronounce such decree if it finds that the petitioner has, during the marriage, been guilty of adultery,

or if the petitioner has, in the opinion of the Court, been guilty of unreasonable delay in presenting or prosecuting such petition,

or of cruelty towards the other party to the marriage,

or of having deserted or wilfully separated himself or herself from the other party before the adultery complained of, and without reasonable excuse,

or of such wilful neglect or misconduct of or towards the other party as has conduced to the adultery.*

Condonation.

No adultery shall be deemed to have been condoned within the meaning of this Act unless where conjugal cohabitation has been resumed or continued.

Relief in case of opposition on certain grounds.

15. In any suit instituted for dissolution of marriage, if the respondent opposes the relief sought on the ground, in case of such a suit instituted by a husband, of his adultery, cruelty, or desertion without reasonable excuse, or, in case of such a suit instituted by a wife, on the ground of her adultery and cruelty, the Court may in such suit give to the respondent, on his or her application, the same relief to which he or she would have been entitled in case he or she had presented a petition seeking such relief, and the respondent shall be competent to give evidence of or relating to such cruelty or desertion.

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* *Gordon* v. *Gordon*, 3 Beng. O. C. J. 139.

Act IV. of 1869.

Decrees for dissolution to be *nisi*.

16. Every decree for a dissolution of marriage made by a High Court, not being a confirmation of a decree of a District Court,* shall, in the first instance, be a decree *nisi*, not to be made absolute till after the expiration of such time, not less than six months from the pronouncing thereof, as the High Court by general or special order from time to time directs.

Collusion.

During that period any person† shall be at liberty, in such manner as the High Court by general or special order from time to time directs, to show cause why the said decree should not be made absolute by reason of the same having been obtained by collusion or by reason of material facts not being brought before the Court.

On cause being so shown, the Court shall deal with the case by making the decree absolute, or by reversing the decree *nisi*, or by requiring further inquiry, or otherwise as justice may demand.

The High Court may order the costs of counsel and witnesses, and otherwise arising from such cause being shown, to be paid by the parties or such one or more of them as it thinks fit, including a wife if she have separate property.

Whenever a decree *nisi* has been made, and the petitioner fails, within a reasonable time, to move to have such decree made absolute, the High Court may dismiss the suit.

Confirmation of decree for dissolution by District Judge.

17. Every decree for a dissolution of marriage made by a District Judge shall be subject to confirmation by the High Court.

Cases for confirmation of a decree for dissolution of marriage shall be heard (where the number of the Judges of the High Court is three or upwards) by a Court composed of three such Judges, and in case of difference the opinion of the majority shall prevail, or (where the number of the Judges of the High Court is two) by a Court composed of such two Judges, and in case of difference the opinion of the senior Judge shall prevail.

The High Court, if it think further enquiry or additional evidence to be necessary, may direct such enquiry to be made, or such evidence to be taken.

The result of such enquiry and the additional evidence shall be certified to the High Court by the District Judge, and the High Court shall thereupon make an order confirming the decree for dissolution of marriage, or such other order as to the Court seems fit:

Provided that no decree shall be confirmed under this section till after the expiration of such time, not less than six months from the pronouncing thereof, as the High Court by general or special order from time to time directs.

During the progress of the suit in the Court of the District Judge, any person suspecting that any parties to the suit are or have been acting in collusion for the purpose of obtaining a divorce, shall be at liberty, in such manner as the High Court by general or special order from time to time directs, to apply to the High Court to remove the suit under section 8, and the High Court shall thereupon, if it think fit, remove such suit and try and determine the same as a Court of original jurisdiction, and the provisions contained in section 16 shall apply to every suit so removed; or it may direct the District Judge to take such steps in respect of the alleged collusion as may be necessary to enable him to make a decree in accordance with the justice of the case.

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* As to District Courts under this Act in the Punjab, see Act XVIII. of 1884, s. 23.

† Other than the parties against whom the decree was made, 4 Beng. O. C. J. 52.

IV.—Nullity of Marriage.

Petition for decree of nullity.

18. Any husband or wife may present a petition to the District Court or to the High Court, praying that his or her marriage may be declared null and void.

Grounds of decree.

19. Such decree may be made on any of the following grounds :—*

(1.)—That the respondent was impotent at the time of the marriage and at the time of the institution of the suit ;

(2.)—That the parties are within the prohibited degrees of consanguinity (whether natural or legal) or affinity ;

(3.)—That either party was a lunatic or idiot at the time of the marriage ;

(4.)—That the former husband or wife of either party was living at the time of the marriage, and the marriage with such former husband or wife was then in force.

Nothing in this section shall affect the jurisdiction of the High Court to make decrees of nullity of marriage on the ground that the consent of either party was obtained by force or fraud.

Confirmation of District Judge's decree.

20. Every decree of nullity of marriage made by a District Judge shall be subject to confirmation by the High Court, and the provisions of section 17, clauses 1, 2, 3, and 4, shall, *mutatis mutandis*, apply to such decrees.

Children of annulled marriage.

21. Where a marriage is annulled on the ground that a former husband or wife was living, and it is adjudged that the subsequent marriage was contracted in good faith and with the full belief of the parties that the former husband or wife was dead, or when a marriage is annulled on the ground of insanity, children begotten before the decree is made shall be specified in the decree, and shall be entitled to succeed, in the same manner as legitimate children, to the estate of the parent who at the time of the marriage was competent to contract.

V.—Judicial Separation.

Bar to decree for divorce *a mensâ et toro* ; but judicial separation obtainable by husband or wife.

22. No decree shall hereafter be made for a divorce *a mensâ et toro*, but the husband or wife may obtain a decree of judicial separation, on the ground of adultery, or cruelty, or desertion without reasonable excuse for two years or upwards, and such decree shall have the effect of a divorce *a mensâ et toro* under the existing law, and such other legal effect as hereinafter mentioned.

Application for separation made by petition.

23. Application for judicial separation on any one of the grounds aforesaid may be made by either husband or wife by petition to the District Court or the High Court ; and the Court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree judicial separation accordingly.

Separated wife deemed spinster with respect to after-acquired property.

24. In every case of a judicial separation under this Act, the wife shall, from the date of the sentence, and whilst the separation continues, be considered as unmarried with respect to property of every description which she may acquire, or which may come to or devolve upon her.

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* And on no others.—13 Beng. 109.

Act IV. of 1869.

Such property may be disposed of by her in all respects as an unmarried woman, and on her decease the same shall, in case she dies intestate, go as the same would have gone if her husband had been then dead:

Provided that, if any such wife again cohabits with her husband, all such property as she may be entitled to when such cohabitation takes place shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband whilst separate.

Separated wife deemed spinster for purposes of contract and suing.

25. In every case of a judicial separation under this Act, the wife shall, whilst so separated, be considered as an unmarried woman for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceeding; and her husband shall not be liable in respect of any contract, act, or costs entered into, done, omitted, or incurred by her during the separation:

Provided that, where, upon any such judicial separation, alimony has been decreed or ordered to be paid to the wife, and the same is not duly paid by the husband, he shall be liable for necessaries supplied for her use:

Provided also that nothing shall prevent the wife from joining, at any time during such separation, in the exercise of any joint power given to herself and her husband.

Reversal of Decree of Separation.

Decree of separation obtained during absence of husband or wife may be reversed.

26. Any husband or wife, upon the application of whose wife or husband, as the case may be, a decree of judicial separation has been pronounced, may, at any time thereafter, present a petition to the Court by which the decree was pronounced, praying for a reversal of such decree, on the ground that it was obtained in his or her absence, and that there was reasonable excuse for the alleged desertion, where desertion was the ground of such decree.

The Court may, on being satisfied of the truth of the allegations of such petition, reverse the decree accordingly; but such reversal shall not prejudice or affect the rights or remedies which any other person would have had, in case it had not been decreed, in respect of any debts, contracts, or acts of the wife incurred, entered into, or done between the times of the sentence of separation and of the reversal thereof.

VI.—Protection-orders.

Deserted wife may apply to Court for protection.

27. Any wife to whom the fourth section of the Indian Succession Act, 1865, does not apply, may, when deserted by her husband, present a petition to the District Court or the High Court, at any time after such desertion, for an order to protect any property which she may have acquired or may acquire, and any property of which she may have become possessed or may become possessed after such desertion, against her husband or his creditors, or any person claiming under him.

Court may grant protection-order.

28. The Court, if satisfied of the fact of such desertion, and that the same was without reasonable excuse, and that the wife is maintaining herself by her own industry or property, may make and give to the wife an order protecting her earnings and other property from her husband and all creditors and persons claiming under him. Every such order shall state the time at which the desertion

commenced, and shall, as regards all persons dealing with the wife in reliance thereon, be conclusive as to such time. Act IV of 1869.

Discharge or variation of orders.

29. The husband or any creditor of, or person claiming under, him may apply to the Court by which such order was made for the discharge or variation thereof, and the Court, if the desertion has ceased, or if for any other reason it think fit so to do, may discharge or vary the order accordingly.

Liability of husband seizing wife's property after notice of order.

30. If the husband, or any creditor of, or person claiming under, the husband, seizes or continues to hold any property of the wife after notice of any such order, he shall be liable, at the suit of the wife (which she is hereby empowered to bring), to return or deliver to her the specific property, and also to pay her a sum equal to double its value.

Wife's legal position during continuance of order.

31. So long as any such order of protection remains in force, the wife shall be and be deemed to have been, during such desertion of her, in the like position in all respects, with regard to property and contracts and suing and being sued, as she would be under this Act if she obtained a decree of judicial separation.

VII.—Restitution of Conjugal Rights.

Petition for restitution of conjugal rights.

32. When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, either wife or husband may apply, by petition to the District Court or the High Court, for restitution of conjugal rights; and the Court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

Answer to petition.

33. Nothing shall be pleaded in answer to a petition for restitution of conjugal rights, which would not be ground for a suit for judicial separation or for a decree of nullity of marriage.

VIII.—Damages and Costs.

Husband may claim damages from adulterer.

34. Any husband may, either in a petition for dissolution of marriage or for judicial separation, or in a petition to the District Court or the High Court limited to such object only, claim damages from any person on the ground of his having committed adultery with the wife of such petitioner.

Such petition shall be served on the alleged adulterer and the wife, unless the Court dispenses with such service, or directs some other service to be substituted.

The damages to be recovered on any such petition shall be ascertained by the said Court,* although the respondents or either of them may not appear.

After the decision has been given, the Court may direct in what manner such damages shall be paid or applied.

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* *Kelly* v. *Kelly*. 3 Beng. O. C. J. 67.

Act IV. of 1869.

Power to order adulterer to pay costs.

35. Whenever in any petition presented by a husband the alleged adulterer has been made a co-respondent, and the adultery has been established, the Court may order the co-respondent to pay the whole or any part of the costs of the proceedings:

Provided that the co-respondent shall not be ordered to pay the petitioner's costs—

(1) if the respondent was, at the time of the adultery, living apart from her husband, and leading the life of a prostitute, or

(2) if the co-respondent had not, at the time of the adultery, reason to believe the respondent to be a married woman.

Power to order litigious intervenor to pay costs.

Whenever any application is made under section 17, the Court, if it thinks that the applicant had no grounds or no sufficient grounds for intervening, may order him to pay the whole or any part of the costs occasioned by the application.

IX.—Alimony.

Alimony *pendente lite.*

36. In any suit under this Act, whether it be instituted by a husband or a wife, and whether or not she has obtained an order of protection, the wife may present a petition for alimony pending the suit.

Such petition shall be served on the husband; and the Court, on being satisfied of the truth of the statements therein contained, may make such order on the husband for payment to the wife of alimony pending the suit as it may deem just:*

Provided that alimony pending the suit shall in no case exceed one-fifth of the husband's average net income for the three years next preceding the date of the order, and shall continue, in case of a decree for dissolution of marriage or of nullity of marriage, until the decree is made absolute or is confirmed, as the case may be.

Power to order permanent alimony.

37. The High Court may, if it think fit, on any decree absolute declaring a marriage to be dissolved, or on any decree of judicial separation obtained by the wife,†

and the District Judge may, if he thinks fit, on the confirmation of any decree of his, declaring a marriage to be dissolved, or on any decree of judicial separation obtained by the wife,

order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as, having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it thinks reasonable;‡ and for that purpose may cause a proper instrument to be executed by all necessary parties.

Power to order monthly or weekly payments.

In every such case the Court may make an order on the husband for payment to the wife of such monthly or weekly sums for her maintenance and support as the Court may think reasonable:

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* *Kelly* v. *Kelly*. 3 Beng. App. 4: *Gordon* v. *Gordon*, ibid. 13.
† *Kelly* v. *Kelly*. 5 Beng. 71, 74.
‡ *Ord* v. *Ord*. 5 Beng. App. 34.

Provided that, if the husband afterwards from any cause becomes unable to make such payments, it shall be lawful for the Court to discharge or modify the order, or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, and again to revive the same order wholly or in part, as to the Court seems fit. Act IV. of 1869.

Court may direct payment of alimony to wife or to her trustee.

38. In all cases in which the Court makes any decree or order for alimony, it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the Court, and may impose any terms or restrictions which to the Court seem expedient, and may from time to time appoint a new trustee, if it appears to the Court expedient so to do.

X.—Settlements.

Power to order settlement of wife's property for benefit of husband and children.

39. Whenever the Court pronounces a decree of dissolution of marriage or judicial separation for adultery of the wife, if it is made to appear to the Court that the wife is entitled to any property, the Court may, if it think fit, order such settlement as it thinks reasonable to be made of such property or any part thereof, for the benefit of the husband, or of the children of the marriage, or of both.

Any instrument executed pursuant to any order of the Court at the time of or after the pronouncing of a decree of dissolution of marriage or judicial separation shall be deemed valid notwithstanding the existence of the disability of coverture at the time of the execution thereof.

Settlement of damages.

The Court may direct that the whole or any part of the damages recovered under section 34 shall be settled for the benefit of the children of the marriage, or as a provision for the maintenance of the wife.

Inquiry into existence of ante-nuptial or post-nuptial settlements.

40. The High Court, after a decree absolute for dissolution of marriage, or a decree of nullity of marriage,

and the District Court, after its decree for dissolution of marriage or of nullity of marriage has been confirmed,

may inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may make such orders, with reference to the application of the whole or a portion of the property settled, whether for the benefit of the husband or the wife, or of the children (if any) of the marriage, or of both children and parents, as to the Court seems fit :*

Provided that the Court shall not make any order for the benefit of the parents or either of them at the expense of the children.

XI.—Custody of Children.

Power to make orders as to custody of children in suit for separation.

41. In any suit for obtaining a judicial separation the Court may from time to time, before making its decree, make such interim-orders, and may make such provision in the decree, as it deems proper with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents is the subject of such suit, and may, if it think fit, direct proceedings to be taken for placing such children under the protection of the said Court.

* *Wood* v. *Wood*, 14 Beng. App. 6.

Act IV. of 1869.

Power to make such orders after decree.

42. The Court, after a decree of judicial separation, may, upon application (by petition) for this purpose, make, from time to time, all such orders and provision, with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents is the subject of the decree, or for placing such children under the protection of the said Court, as might have been made by such decree or by interim-orders in case the proceedings for obtaining such decree were still pending.

Power to make orders as to custody of children in suits for dissolution or nullity.

43. In any suit for obtaining a dissolution of marriage or a decree of nullity of marriage instituted in, or removed to, a High Court, the Court may from time to time, before making its decree absolute or its decree (as the case may be), make such interim-orders, and may make such provision in the decree absolute or decree,

and in any such suit instituted in a District Court, the Court may from time to time, before its decree is confirmed, make such interim-orders, and may make such provision on such confirmation,

as the High Court or District Court (as the case may be) deems proper with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents is the subject of the suit;

and may, if it think fit, direct proceedings to be taken for placing such children under the protection of the Court.

Power to make such orders after decree or confirmation.

44. The High Court, after a decree absolute for dissolution of marriage or a decree of nullity of marriage,

and the District Court, after a decree for dissolution of marriage or of nullity of marriage has been confirmed,

may, upon application by petition for the purpose, make from time to time all such orders and provision, with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents was the subject of the decree, or for placing such children under the protection of the said Court, as might have been made by such decree absolute or decree (as the case may be), or by such interim-orders as aforesaid.

XII.—Procedure.

Code of Civil Procedure to apply.

45. Subject to the provisions herein contained, all proceedings under this Act between party and party shall be regulated by the Code of Civil Procedure.*

Forms of petitions and statements.

46. The forms set forth in the schedule to this Act, with such variation as the circumstances of each case require, may be used for the respective purposes mentioned in such schedule.

Stamp on petition.

Petition to state absence of collusion.

47. Every petition† under this Act for a decree of dissolution of marriage, or of nullity of marriage, or of judicial separation,‡ shall‡ state that there is not any collusion or connivance between the petitioner and the other party to the marriage.

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* See Act XIV. of 1882, s. 3.

† For Court-fee, see now Act VII. of 1870, Sch. II., No. 20.

‡ Certain words, which were repealed by Act VII. of 1870, have been omitted.

Statements to be verified.

The statements contained in every petition under this Act shall be verified by the petitioner or some other competent person in manner required by law for the verification of plaints, and may at the hearing be referred to as evidence.

Suits on behalf of lunatics.

48. When the husband or wife is a lunatic or idiot, any suit under this Act (other than a suit for restitution of conjugal rights) may be brought on his or her behalf by the committee or other person entitled to his or her custody.

Suits by minors.

49. Where the petitioner is a minor, he or she shall sue by his or her next friend to be approved by the Court; and no petition presented by a minor under this Act shall be filed until the next friend has undertaken in writing to be answerable for costs.

Such undertaking* shall be filed in Court, and the next friend shall thereupon be liable in the same manner and to the same extent as if he were a plaintiff in an ordinary suit.

Service of petition.

50. Every petition under this Act shall be served on the party to be affected thereby, either within or without British India, in such manner as the High Court by general or special order from time to time directs:

Provided that the Court may dispense with such service altogether in case it seems necessary or expedient so to do.

Mode of taking evidence.

51. The witnesses in all proceedings before the Court, where their attendance can be had, shall be examined orally, and any party may offer himself or herself as a witness, and shall be examined, and may be cross-examined and re-examined, like any other witness:

Provided that the parties shall be at liberty to verify their respective cases in whole or in part by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party, or by direction of the Court, be subject to be cross-examined by or on behalf of the opposite party orally, and after such cross-examination may be re-examined orally as aforesaid by or on behalf of the party by whom such affidavit was filed.

Competence of husband and wife to give evidence as to cruelty or desertion.

52. On any petition presented by a wife, praying that her marriage may be dissolved by reason of her husband having been guilty of adultery coupled with cruelty, or of adultery coupled with desertion without reasonable excuse, the husband and wife respectively shall be competent and compellable to give evidence of or relating to such cruelty or desertion.

Power to close doors.

53. The whole or any part of any proceeding under this Act may be heard, if the Court thinks fit, with closed doors.

Power to adjourn.

54. The Court may from time to time adjourn the hearing of any petition under this Act, and may require further evidence thereon if it sees fit so to do.

Enforcement of and appeals from orders and decrees.

55. All decrees and orders made by the Court in any suit or proceeding under this Act shall be enforced and may be appealed† from, in the like manner as the decrees and orders

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* Certain words, which were repealed by Act VII. of 1870, have been omitted. For Court-fee, see now No. 7 of Sch. II. of that Act.

† For Court-fee on memorandum of appeal, see Act VII. of 1870, Sch. II., No. 20.

Act IV. of 1869.

of the Court made in the exercise of its original civil jurisdiction are enforced and may be appealed from, under the laws, rules, and orders for the time being in force :

Provided that there shall be no appeal from a decree of a District Judge for dissolution of marriage or of nullity of marriage: nor from the order of the High Court confirming or refusing to confirm such decree :

No appeal as to costs.

Provided also that there shall be no appeal on the subject of costs only.

56. Any person may appeal to Her Majesty in Council from any decree (other than a decree *nisi*) or order under this Act of a High Court made on appeal or otherwise,

Appeal to Queen in Council.

and from any decree (other than a decree *nisi*) or order made in the exercise of original jurisdiction by Judges of a High Court or of any Division Court from which an appeal shall not lie to the High Court,

when the High Court declares that the case is a fit one for appeal to Her Majesty in Council.

XIII.—Re-marriage.

57. When six months after the date of an order of a High Court confirming the decree for a dissolution of marriage made by a District Judge have expired,

Liberty to parties to marry again.

or when six months after the date of any decree of a High Court dissolving a marriage have expired, and no appeal has been presented against such decree to the High Court in its appellate jurisdiction,

or when any such appeal has been dismissed,

or when in the result of any such appeal any marriage is declared to be dissolved,

but not sooner, it shall be lawful for the respective parties to the marriage to marry again as if the prior marriage had been dissolved by death :

Provided that no appeal to Her Majesty in Council has been presented against any such order or decree.

When such appeal has been dismissed, or when in the result thereof the marriage is declared to be dissolved, but not sooner, it shall be lawful for the respective parties to the marriage to marry again as if the prior marriage had been dissolved by death.

58. No clergyman in Holy Orders of the* Church of England* shall be compelled to solemnize the marriage of any person whose former marriage has been dissolved on the ground of his or her adultery, or shall be liable to any suit, penalty, or censure for solemnizing or refusing to solemnize the marriage of any such person.

English clergyman not compelled to solemnize marriages of persons divorced for adultery.

59. When any minister of any church or chapel of the said* Church refuses to perform such marriage-service between any persons who but for such refusal would be entitled to have the same service performed in such church or chapel, such minister shall permit any other minister in Holy Orders of the said Church, entitled to officiate within the diocese in which such church or chapel is situate, to perform such marriage-service in such church or chapel.

English minister refusing to perform ceremony to permit use of his church.

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* Certain words, which were repealed by Act XII. of 1873, have been omitted.

XIV.—Miscellaneous.

60. Every decree for judicial separation or order to protect property, obtained by a wife under this Act, shall, until reversed or discharged, be deemed valid, so far as necessary, for the protection of any person dealing with the wife.

Decree for separation or protection-order valid as to persons dealing with wife before reversal.

No reversal, discharge, or variation of such decree or order shall affect any rights or remedies which any person would otherwise have had in respect of any contracts or acts of the wife entered into or done between the dates of such decree or order, and of the reversal, discharge, or variation thereof.

All persons who in reliance on any such decree or order make any payment to, or permit any transfer or act to be made or done by, the wife who has obtained the same, shall, notwithstanding such decree or order may then have been reversed, discharged, or varied, or the separation of the wife from her husband may have ceased, or at some time since the making of the decree or order been discontinued, be protected and indemnified as if, at the time of such payment, transfer, or other act, such decree or order were valid and still subsisting without variation, and the separation had not ceased or been discontinued,

Indemnity of persons making payment to wife without notice of reversal of decree or protection-order.

unless, at the time of the payment, transfer, or other act, such persons had notice of the reversal, discharge, or variation of the decree or order, or of the cessation or discontinuance of the separation.

61. After this Act comes into operation, no person competent to present a petition under sections 2 and 10 shall maintain a suit for criminal conversation with his wife.

Bar of suit for criminal conversation.

62. The High Court shall make such rules under this Act as it may from time to time consider expedient, and may from time to time alter and add to the same:

Power to make rules.

Provided that such rules, alterations, and additions are consistent with the provisions of this Act and the Code of Civil Procedure.*

All such rules, alterations, and additions shall be published in the local official Gazette.

SCHEDULE OF FORMS.

No. 1.—Petition by husband for a dissolution of marriage with damages against co-respondent, by reason of adultery.

(See sections 10 and 34.)

In the (High) Court of
To the Hon'ble Mr. Justice [*or* To the Judge of].
The day of 18 .
The petition of *A B* of

Showeth,

1. That your petitioner was, on the day of one thousand eight hundred and , lawfully married to *C B*, then *C D*, spinster, at .†

2. That, from his said marriage, your petitioner lived and cohabited with his said wife at and at in , and lastly at , in , and that your petitioner and his said wife have had issue of their said marriage, *five* children, of whom *two* sons only survive, aged respectively *twelve* and *fourteen* years.

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* See Act XIV. of 1882, s. 3.

† If the marriage was solemnized out of India, the adultery must be shown to have been committed in India.

Act IV. of 1869.

3. That during the *three* years immediately preceding the day of one thousand eight hundred and , *XY* was constantly, with few exceptions, residing in the house of your petitioner at aforesaid, and that, on divers occasions during the said period, the dates of which are unknown to your petitioner, the said *C B* in your petitioner's said house committed adultery with the said *X Y*.

4. That no collusion or connivance exists between me and my said wife for the purpose of obtaining a dissolution of our said marriage or for any other purpose.

Your petitioner, therefore, prays that this (Hon'ble) Court will decree a dissolution of the said marriage, and that the said *X Y* do pay the sum of Rupees 5,000 as damages by reason of his having committed adultery with your petitioner's said wife, such damages to be paid to your petitioner, or otherwise paid or applied as to this (Hon'ble) Court seems fit.

(Signed) *A B.**

Form of Verification.

I, *A B*, the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

No. 2.—Respondent's statement in answer to No. 1.

In the Court of the day of

Between *A B*, petitioner,
C B, respondent, and
X Y, co-respondent.

C B, the respondent, by *D E*, her attorney [*or* vakil], in answer to the petition of *A B*, says that she denies that she has on divers or any occasions committed adultery with *X Y*, as alleged in the third paragraph of the said petition.

Wherefore the respondent prays that this (Hon'ble) Court will reject the said petition.

(Signed) *C B*.

No. 3—Co-respondent's statement in answer to No. 1.

In the (High) Court of
The day of

Between *A B*, petitioner,
C B, respondent, and
X Y, co-respondent.

X Y, the co-respondent, in answer to the petition filed in this cause, saith that he denies that he committed adultery with the said *C B* as alleged in the said petition.

Wherefore the said *X Y* prays that this (Hon'ble) Court will reject the prayer of the said petitioner, and order him to pay the costs of and incident to the said petition.

(Signed) *X Y*.

No. 4.—Petition for Decree of Nullity of Marriage.

(See section 18.)

In the (High) Court of
To the Hon'ble Mr. Justice [*or* To the Judge of].
The day of 18 .
The petition of *A B*, falsely called *A D*.

Showeth,

1. That on the day of , one thousand eight hundred and , your petitioner, then a spinster, eighteen years of age, was married in fact, though not in law, to *C D*, then a bachelor of about thirty years of age, at [*some place in India*].

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* The petition must be signed by the petitioner.

2. That from the day of , one thousand eight hundred and , until the month of , one thousand eight hundred and , your petitioner lived and cohabited with the said *C D*, at divers places, and particularly at aforesaid.

3. That the said *C D* has never consummated the said pretended marriage by carnal copulation.

4. That, at the time of the celebration of your petitioner's said pretended marriage, the said *C D* was, by reason of his impotency or malformation, legally incompetent to enter into the contract of marriage.

5. That there is no collusion or connivance between her and the said *C D* with respect to the subject of this suit.

Your petitioner therefore prays that this (Hon'ble) Court will declare that the said marriage is null and void.

(Signed) *A B.*

Form of Verification : see No. 1.

No. 5.—PETITION BY WIFE FOR JUDICIAL SEPARATION ON THE GROUND OF HER HUSBAND'S ADULTERY.

(See section 22.)

In the (High) Court of

To the Hon'ble Mr. Justice [*or* To the Judge of].

The day of 186 .

The petition of *C B*, of , the wife of *A B*.

SHEWETH,

1. That on the day of , one thousand eight hundred and *sixty* , your petitioner, then *C D*, was lawfully married to *A B* at the Church of , in the .

2. That, after her said marriage, your petitioner cohabited with the said *A B* at and at , and that your petitioner and her said husband have issue living of their said marriage, *three* children, to wit, *&c., &c.**

3. That, on divers occasions in or about the months of *August, September*, and *October*, one thousand eight hundred and *sixty* , the said *A B*, at aforesaid, committed adultery with *E F*, who was then living in the service of the said *A B* and your petitioner at their said residence aforesaid.

4. That, on divers occasions in the months of *October, November*, and *December*, one thousand eight hundred and *sixty* , the said *A B*, at aforesaid, committed adultery with *G H*, who was then living in the service of the said *A B* and your petitioner at their said residence aforesaid.

5. That no collusion or connivance exists between your petitioner and the said *A B* with respect to the subject of the present suit.

Your petitioner therefore prays that this (Hon'ble) Court will decree a judicial separation to your petitioner from her said husband by reason of his aforesaid adultery.

(Signed) *C B.*†

Form of Verification : see No. 1.

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* State the respective ages of the children.

† The petition must be signed by the petitioner.

Act IV. of 1869.

No. 6.—Statement in answer to No. 5.

In the (High) Court of

B against *B*.

The day of .

The respondent, *A B*, by *W Y*, his attorney [*or* vakil], saith,—

1. That he denies that he committed adultery with *E F*, as in the third paragraph of the petition alleged.

2. That the petitioner condoned the said adultery with *E F*, if any.

3. That he denies that he committed adultery with *G H*, as in the fourth paragraph of the petition alleged.

4. That the petitioner condoned the said adultery with *G H*, if any.

Wherefore this respondent prays that this (Hon'ble) Court will reject the prayer of the said petition.

(Signed) *A B*.

No. 7.—Statement in reply to No. 6.

In the (High) Court of

B against *B*.

The day of

The petitioner, *C B*, by her attorney [*or* vakil], says—

1. That she denies that she condoned the said adultery of the respondent with *E F*, as in the second paragraph of the statement in answer alleged.

2. That, even if she had condoned the said adultery, the same has been revived by the subsequent adultery of the respondent with *G H*, as set forth in the fourth paragraph of the petition.

(Signed) *C B*.

No. 8.—Petition for a judicial separation by reason of cruelty.

(See section 22.)

In the (High) Court of

To the Hon'ble Mr. Justice [*or* To the Judge of]

The day of 186 .

The petition of *A B* (wife of *C B*) of

Sheweth,

1. That, on the day of , one thousand eight hundred and your petitioner, then *A D*, spinster, was lawfully married to *C B* at .

2. That, from her said marriage, your petitioner lived and cohabited with her said husband at until the day of , one thousand eight hundred and , when your petitioner separated from her said husband as hereinafter more particularly mentioned, and that your petitioner and her said husband have had no issue of their said marriage.

3. That, from and shortly after your petitioner's said marriage, the said *C B* habitually conducted himself towards your petitioner with great harshness and cruelty, frequently abusing her in the coarsest and most insulting language, and beating her with his fists, with a cane, or with some other weapon.

4. That, on an evening in or about the month of , one thousand eight hundred and , the said *C B*, in the highway and opposite to the house in which your petitioner and the said *C B* were then residing at aforesaid, endeavoured to knock your petitioner down, and was only prevented from so doing by the interference of *F D*, your petitioner's brother.

5. That subsequently, on the same evening, the said *C B*, in his said house at aforesaid, struck your petitioner with his clenched fist a violent blow on her face.

6. That on one Friday night in the month of , one thousand eight hundred and , the said *C B*, in , without provocation, threw a knife at your petitioner, thereby inflicting a severe wound on her right hand.

7. That on the afternoon of the day of , one thousand eight hundred and , your petitioner, by reason of the great and continued cruelty practised towards her by her said husband, with assistance withdrew from the house of her said husband to the house of her father at : that from and after the said day of , one thousand eight hundred and , your petitioner hath lived separate and apart from her said husband, and hath never returned to his house or to cohabitation with him.

8. That there is no collusion or connivance between your petitioner and her said husband with respect to the subject of the present suit.

Your petitioner therefore prays that this (Hon'ble) Court will decree a judicial separation between your petitioner and the said *C B*, and also order that the said *C B* do pay the costs of and incident to these proceedings.

(Signed) *A B.*

Form of Verification : see No. 1.

No. 9.—Statement in answer to No. 8.

In the (High) Court of

The day of .

Between *A B*, petitioner, and
C B, respondent.

C B, the respondent, in answer to the petition filed in this cause, by *W F*, his attorney [*or* vakil], saith that he denies that he has been guilty of cruelty towards the said *A B*, as alleged in the said petition.

(Signed) *C B.*

No. 10.—Petition for reversal of decree of separation.

(See section 24.)

In the (High) Court of

To the Hon'ble Mr. Justice [*or* To the Judge of

The day of 186

The petition of *A B*, of

Sheweth,

1. That your petitioner was, on the day of , lawfully married to

2. That on the day of , this (Hon'ble) Court, at the petition of , pronounced a decree affecting the petitioner to the effect following, to wit,—

[*Here set out the decree.*]

Act IV. of 1869.

3. That such decree was obtained in the absence of your petitioner, who was then residing at .

[*State facts tending to show that the petitioner did not know of the proceedings; and, further, that had he known he might have offered a sufficient defence.*]

or

That there was reasonable ground for your petitioner leaving his said wife, for that his said wife

[*Here state any legal grounds justifying the petitioner's separation from his wife.*]

Your petitioner therefore prays that this (Hon'ble) Court will reverse the said decree.

(Signed) *A B.*

Form of Verification : see No. 1.

No. 11.—Petition for protection-order.

(See section 27.)

In the (High) Court of

To the Hon'ble Mr. Justice [*or* To the Judge of

The day of 186 .

The petition of *C B*, of the wife of *A B*.

Sheweth,

That on the day of she was lawfully married to *A B*, at

That she lived and cohabited with the said *A B* for years at , and also at , and hath had children, issue of her said marriage, of whom are now living with the applicant, and wholly dependent upon her earnings.

That, on or about , the said *A B*, without any reasonable cause, deserted the applicant, and hath ever since remained separate and apart from her.

That, since the desertion of her said husband, the applicant hath maintained herself by her own industry [*or* on her own property, *as the case may be*], and hath thereby and otherwise acquired certain property consisting of [*here state generally the nature of the property*].

Wherefore she prays an order for the protection of her earnings and property acquired since the said day of , from the said *A B*, and from all creditors and persons claiming under him.

(Signed) *C B.*

No. 12.—Petition for alimony pending the suit.

(See section 36.)

In the (High) Court of

B against *B*.

To the Hon'ble Mr. Justice [*or* To the Judge of].

The day of 186 .

The petition of *C B*, the lawful wife of *A B*.

Sheweth,

1. That the said *A B* has for some years carried on the business of , at , and from such business derives the nett annual income of from Rs. 4,000 to 5,000.

2. That the said *A B* is possessed of plate, furniture, linen, and other effects at his said house aforesaid, all of which he acquired in right of your petitioner as his wife, or purchased with money he acquired through her, of the value of Rs. 10,000. Act IV. of 1869.

3. That the said *A B* is entitled, under the will of his father, subject to the life-interest of his mother therein, to property of the value of Rs. 5,000 or some other considerable amount.*

Your petitioner therefore prays that this (Hon'ble) Court will decree such sum or sums of money by way of alimony, pending the suit, as to this (Hon'ble) Court may seem meet.

(Signed) *C B.*

Form of Verification : see No. 1.

No. 13.—Statement in answer to No. 12.

In the (High) Court of

B against *B*.

A B, of , the above-named respondent, in answer to the petition for alimony, pending the suit, of *C B*, says—

1. In answer to the first paragraph of the said petition, I say that I have for the last *three* years carried on the business of , at , and that, from such business, I have derived a nett annual income of Rs. 900, but less than Rs. 1,000.

2. In answer to the second paragraph of the said petition, I say that I am possessed of plate, furniture, linen, and other chattels and effects at my said house aforesaid, of the value of Rs. 7,000, but, as I verily believe, of no larger value. And I say that a portion of the said plate, furniture, and other chattels and effects of the value of Rs. 1,500, belonged to my said wife before our marriage, but the remaining portions thereof I have since purchased with my own moneys. And I say that, save as hereinbefore set forth, I am not possessed of the plate and other effects as alleged in the said paragraph in the said petition, and that I did not acquire the same as in the said petition also mentioned.

3. I admit that I am entitled, under the will of my father, subject to the life-interest of my mother therein, to property of the value of Rs. 5,000, that is to say, I shall be entitled, under my said father's will upon the death of my mother, to a legacy of Rs. 7,000, out of which I shall have to pay to my father's executors the sum of Rs. 2,000, the amount of a debt owing by me to his estate, and upon which debt I am now paying interest at the rate of five per cent. per annum.

4. And, in further answer to the said petition, I say that I have no income whatever except that derived from my aforesaid business; that such income, since my said wife left me, which she did on the day of last, has been considerably diminished, and that such diminution is likely to continue. And I say that, out of my said income, I have to pay the annual sum of Rs. 100 for such interest as aforesaid to my late father's executors, and also to support myself and my two eldest children.

5. And, in further answer to the said petition, I say that, when my wife left my dwelling-house on the day of last, she took with her, and has ever since withheld and still withholds from me, plate, watches, and other effects in the second paragraph of this my answer mentioned, of the value of, as I verily believe, Rs. 800 at the least; and I also say that, within five days of her departure from my house as aforesaid, my said wife received bills due to me from certain lodgers of mine, amounting in the aggregate to Rs. , and that she has ever since withheld and still withholds from me the same sum.

(Signed) *A B.*

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* The petitioner should state her husband's income as accurately as possible.

Act V. of 1869.

NO. 14.—UNDERTAKING BY MINOR'S NEXT FRIEND TO BE ANSWERABLE FOR RESPONDENT'S COSTS.

(See section 49.)

In the (High) Court of

I, the undersigned *A B*, of , being the next friend of *C D*, who is a minor, and who is desirous of filing a petition in this Court, under the Indian Divorce Act, against *D D* of , hereby undertake to be responsible for the costs of the said *D D* in such suit, and that, if the said *C D* fail to pay to the said *D D* when and in such manner as the Court shall order all such costs of such suit as the Court shall direct him [*or* her] to pay to the said *D D*, I will forthwith pay the same to the proper officer of this Court.

Dated this day of 186 .

(Signed) *A B.*

The Indian Articles of War Amendment Act 1894 (12 of 1894)

ACT V. OF 1869.

THE INDIAN ARTICLES OF WAR.

RECEIVED THE G.-G.'S ASSENT ON THE 26TH FEBRUARY 1869.

An Act to consolidate and amend the Articles of War for the government of Her Majesty's Native Indian Forces.

Preamble.

WHEREAS it is expedient to consolidate and amend the Articles of War for the government of the Native Officers, Soldiers, and other persons in Her Majesty's Indian Army; It is hereby enacted as follows :—

PART I.—PRELIMINARY.

(*a.*)—*Short title.*

This Act may be called "The Indian Articles of War."

(*b.*)—*Commencement of Act.*

This Act shall come into operation on the 1st day of June 1869.

(*c.*)—*Repeal of Enactments.* [*Repealed by Act No. XIV. of 1870.*]

References to any Act hereby repealed* in† any Act passed subsequently thereto shall be read as if made to this Act.

(*d.*)—*Application of Articles.*

The Articles contained in Part II. of this Act shall apply to all
Commissioned Officers,
Sub-Assistant Surgeons,
Hospital Assistants,
Native Doctors,
Warrant Officers,
Non-Commissioned Officers,
Hospital Attendants of any class,

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* Acts XXIX. of 1861, V. of 1863, XXVI. of 1865, and XXV. of 1857, s. 1.

† The word "in" has been substituted for the word "or" by Act XII. of 1891, Sch. II.

Trumpeters, Buglers, Drummers,
Musicians,
Soldiers,
Unattested Recruits,
Lascars, Mahouts, Drivers,
Farriers, Syces, Grass-cutters,
Artificers, Labourers,
Sutlers, Followers, whether public or private, and all other persons attached to or serving with any portion of the said Army:

Proviso.

Provided that nothing in the said Part (other than Article 123) shall render any British-born subject of Her Majesty, or any legitimate Christian lineal descendant of such subject, whether in the paternal or maternal line, triable or punishable under the said Part, but all such persons belonging to Her Majesty's Indian Army shall be triable and punishable as if they belonged to Her Majesty's British Forces.

And that nothing in the said Part shall render any American or any Christian European not being British-born, or any Christian legitimate lineal descendant of such American or European, whether in the paternal or maternal line, triable by a Court-martial composed of Native commissioned officers; but all such persons belonging to Her Majesty's Indian Army shall be triable by Court-martial composed of European officers only. Save as aforesaid, such persons shall be subject to this Act as if they were Natives of British India.

(*e.*)—*Interpretation-clause.*

In this Act, unless there be something repugnant in the subject or context—

"Army" means Her Majesty's Indian Army, and "service" means service in such Army:

"Commissioned Officer" includes all officers holding commissions in the Native ranks of the Army, whether they be of purely Native or of a mixed European and Native extraction:

"European Officers" includes all European officers holding commissions in such Army or in Her Majesty's British Army:

"Commanding Officer" or "Officer Commanding" means the European officer in actual command for the time being of any force, division, district, regiment, corps, detachment, or depôt, as the case may be:

"Judge Advocate" includes any European officer duly authorized to officiate as Judge Advocate:

"Court-martial" means a Court-martial held under this Act, and in Articles 67, 68, 69, and 123, shall include a Court-martial held under the Act for punishing mutiny and desertion, and for the better payment of the Army and their quarters for the time being in force:

"Soldier" and "Soldiers" include non-commissioned officers and all armed persons doing duty in the ranks of the army:

"Attested" means attested under the Articles contained in Part II. of the Act:

"Deserter" means a person subject to such Articles, who has deserted from the army:

Act V. of 1869.

"Government" means, in the case of the Madras Army, the Governor of Fort Saint George in Council; in the case of the Bombay Army, the Governor of Bombay in Council, and in the case of any other part of Her Majesty's Indian Army, the Governor-General of India in Council;

And the expressions "assault," "criminal force," "dishonestly," "extortion," "fraudulently," "grievous hurt," "hurt," "theft," "voluntarily causes hurt," "voluntarily causes grievous hurt," "reason to believe," "wrongful gain," and "wrongful loss," shall be severally taken to have the meanings assigned to them respectively in the Indian Penal Code, and quoted in Part I. of the appendix to this Act.

(f.)—Saving of Certain Regulations.

Nothing in this Act affects any regulations by which the respective offices and powers of Cantonment Magistrates, "and officers in charge of the police in cantonments, are defined and controlled."*

PART II.—THE ARTICLES OF WAR.

TITLE I.—ENLISTMENT, DISMISSAL, AND DISCHARGE.

CHAPTER I.—ENLISTMENT.

Articles to be read to Recruits.

Article 1.—Every person, prior to being enrolled in any regiment or corps, shall have the 7th, 8th, 9th, 10th, 11th, 24th, 38th, and 53rd of these Articles read and explained to him.

Affirmation.

When reported fit for duty, such declaration or charge as may be usual shall be made to him, by the officer commanding, in front of the regiment or corps, or of such portion thereof as shall be present; and the person shall then make the following affirmation:—

"I , inhabitant of , son of , solemnly affirm in the presence of Almighty God that I will be faithful to Her Majesty the Queen, Her heirs and successors, and will go wherever I am ordered, by land or sea, and will obey all commands of the officers set over me, even to the peril of my life."

Attestation.

Article 2.—All persons of the following classes, hereafter enlisted or enrolled under these Articles, shall be attested according to the regulations of the Government to which they are respectively subject: Sub-assistant Surgeons, Hospital-assistants, Native Doctors, Warrant-officers of any department, Trumpeters, Buglers, Drummers, Musicians, Soldiers, Lascars, Mahouts, Drivers, Farriers, Syces, and Grass-cutters.†

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* The words quoted have been substituted for the original by the Cantonments Act (XIII. of 1889), s. 2 and Sch.

† See Act V. of 1875, as to the rights and liabilities of certain Native soldiers who have been enrolled without having been attested. See, also, Military Department Notification, No. 200, dated 4th March 1874. *Gazette of India*, Mar. 7, 1874, p. 136.

Articles 3, 4, 5, 7 to 71 (both inclusive), 90 to 94 (both inclusive), 130 to 139 (both inclusive), 154, 167, and 176 shall be read to every person enlisted or enrolled under these Articles at the time of his attestation. Act V. of 1869.

CHAPTER II.—DISMISSAL AND DISCHARGE.

Dismissal of commissioned officers.

Article 3.—A commissioned officer shall be liable to dismissal from the service by the sentence of a General Court-martial, or by order of the Governor-General of India in Council, or of the Commander-in-Chief of the presidency to which he belongs, or, if the officer belongs to either of the presidencies of Fort St. George or Bombay, of the Governor in Council of such presidency.

Every commissioned officer dismissed under these Articles shall forfeit all claim to pension.

Dismissal of other persons.

Article 4.—Any person subject to these Articles, other than a commissioned officer, shall be liable to dismissal from the service

by the sentence of any Court-martial empowered to try him,

or by order of the Governor-General of India in Council, or of the Commander-in-Chief of the presidency to which he belongs.

or, if he belongs to either of the presidencies of Fort St. George and Bombay, by order of the Governor in Council,

or, if he belongs to a Force not attached to any such presidency, by order of the officer commanding such Force.

Every such person so dismissed shall forfeit all claim to pension.

Attested person dismissed and re-enlisting.

Article 5.—Every attested person of or below the rank of non-commissioned officer who has been dismissed or discharged from the service, and who subsequently re-enters the service without at the time stating the fact of his dismissal or discharge, or showing his certificate of dismissal or discharge, may be dismissed the service by the officer commanding the regiment or corps with which he is serving.

Certificate to person dismissed.

Article 6.—Every attested person who is dismissed or discharged from the service shall be furnished by his commanding officer with a certificate, in the English language and in the mother-tongue of such person (when his mother-tongue is not English), setting forth

(*a*) the authority dismissing or discharging him,

(*b*) the cause of his dismissal or discharge, and

(*c*) the full period of his service in the army.

TITLE II.—MILITARY OFFENCES.

CHAPTER I.—CRIMES PUNISHABLE WITH DEATH OR TRANSPORTATION.

Mutiny and sedition.

Article 7.—Any person subject to these Articles—

Who begins, excites, causes, or joins in any mutiny or sedition in any regiment, corps, detachment, or guard;

Act V. of 1869.

or who, being present at any mutiny or sedition, does not use his utmost endeavours to suppress the same,

or who, knowing or having reason to believe in the existence of any mutiny, or of any intention to mutiny, or of any conspiracy against the State,

does not, without delay, give information thereof to his commanding or other superior officer ;—or

Violence to Superior.

Article 8.—Who uses or attempts to use criminal force to, or commits an assault on, his superior officer, whether on or off duty, under any circumstances in which the superior officer is distinguishable as such in any manner ;—or

Disobedience.

Article 9.—Who disobeys the lawful command of his superior officer ;—or

Desertion.

Article 10.—Who deserts the service ;—or

Re-enlistment without having been discharged.

Article 11.—Who, without having first obtained a regular discharge from the regiment or corps to which he belongs, enlists or enrols himself in any other regiment or corps ;—or

Sentry sleeping on or quitting post in time of war.

Article 12.—Who, being a sentry in time of war or alarm, or over any State-prisoner, treasure, magazine, or dockyard, sleeps upon his post, or quits it without being regularly relieved, or without leave ;—or

Sentry plundering.

Article 13.—Who, being a sentry, or on guard, plunders or wilfully destroys or injures any property placed under his charge, or under charge of his guard ;—or

Abandoning garrison.

Article 14.—Who, shamefully abandons or delivers up any garrison, fortress, post, or guard committed to his charge, or which it is his duty to defend ;—or

Betraying watch-word.

Article 15.—Who treacherously makes known the watch-word to any person not entitled to receive it according to the rules and discipline of war ;—or

Corresponding with enemy.

Article 16.—Who directly or indirectly holds correspondence with, or communicates intelligence to, the enemy, or any person in arms against the State, or who, coming to the knowledge of any such correspondence or communication, omits to discover it immediately to his commanding or other superior officer ;—or

Assisting enemy.

Article 17.—Who directly or indirectly assists or relieves with money, victuals, or ammunition, or knowingly harbours or protects any enemy or person in arms against the State ;—or

Releasing prisoners.

Article 18.—Who, without proper authority, releases any State-prisoner, enemy, or person taken in arms against the State, placed under his charge, or who negligently suffers any such prisoner, enemy, or person to escape ;—or

Misbehaviour in presence of enemy.

Article 19.—Who, in presence of an enemy, or of any persons in arms against whom it is his duty to act, shamefully casts away his arms or ammunition, or intentionally uses words or any other means to induce any officer or soldier to abstain from acting against the enemy, or to discourage such officer or soldier from acting against the enemy, or who otherwise misbehaves ;—or

Seeking plunder during action.

Article 20.—Who, in time of action, without authority, leaves his commanding officer, or his post, or colours, or party to go in search of plunder ;—or

Quitting guard in time of war.

Article 21.—Who, in time of war, quits his guard, picquet, party, or patrol, without being regularly relieved or without leave ;—or

Assaulting persons, bringing provisions.

Article 22.—Who, in time of war, or during any military operation, uses criminal force to, or commits an assault on, any person bringing provisions or other necessaries to the camp or quarters of any of Her Majesty's forces,

or forces a safeguard, or, without authority, breaks into any house or other place for plunder ; or plunders, injures, or destroys any field, garden, or other property of any kind ;—or

Causing false alarm in time of war.

Article 23.—Who, in time of war, or during any military operation intentionally occasions a false alarm in action, camp, garrison, or quarters, or spreads reports by words or by letters calculated to create alarm or despondency—

Punishment for the foregoing offences.

Article 24.—Shall, on conviction, suffer death, or transportation for life or for a term of not less than seven years,

or imprisonment (with or without hard labour, and with or without solitary confinement) for a term which may extend to fourteen years,

or such other punishment as a General Court-martial is, by these Articles, empowered to award.

Whenever any person is convicted under this section of an offence punishable with death, all his property, moveable and immoveable, shall be forfeited to Government.

Act V. of 1869.

CHAPTER II.—CRIMES PUNISHABLE OTHERWISE THAN BY DEATH OR TRANSPORTATION.

Unbecoming behaviour.

Article 25.—Any officer, sub-assistant surgeon, hospital-assistant, native doctor, or warrant-officer,

who behaves in a manner unbecoming his position and character;—and

Intoxication on duty.

Article 26.—Any person subject to these Articles,

who is in a state of intoxication when on or for any duty, or on parade, or on the line of march; or

Striking sentry.

Article 27.—Who strikes, or forces or attempts to force, any sentry;—or

Harbouring deserter.

Article 28.—Who knowingly harbours any deserter; or who, knowing, or having reason to believe, that any other person has deserted, or that any deserter has been harboured by any other person, does not immediately give notice to his own or some other superior officer, or use his utmost endeavours to cause such deserter to be apprehended;—or

Enlisting Deserter.

Article 29.—Who knowing, or having reason to believe, that a person is a deserter, enlists him;—or

Absence without leave.

Article 30.—Who absents himself without leave, or, without sufficient cause, overstays leave granted to him;—or

Failure to rejoin.

Article 31.—Who, being on leave of absence, and having received information from proper authority that his regiment or corps has been ordered on service, fails, without sufficient cause, to rejoin without delay;—or

Failure to attend parade.

Article 32.—Who, without sufficient cause, fails to appear at the time fixed at the parade or place appointed for exercise or duty;—or

Quitting parade or division.

Article 33.—Who, when on parade, or on the line of march, without sufficient cause, or without leave from his superior officer, quits the parade or line of march;—or

Quitting guard in time of peace.

Article 34.—Who, in time of peace, quits his guard, picquet, or patrol without being regularly relieved, or without leave;—or

Refusing to receive or releasing prisoners.

Article 35.—Who being in command of a guard, picquet, or patrol, refuses to receive any prisoner duly committed to his charge, or without proper authority releases any prisoner, or negligently suffers any prisoner to escape ;—or

Leaving arrest.

Article 36.—Who, being under arrest, or in confinement, leaves his arrest or confinement before he is set at liberty by proper authority ;—or

Insubordination.

Article 37.—Who is grossly insubordinate or insolent to his superior officer in the execution of his office ;—or

Refusal to superintend military work.

Article 38.—Who refuses to superintend or assist in the making of any field work, or other military work of any description, ordered to be made either in quarters or in the field ;—or

Impeding Provost-marshal.

Article 39.—Who impedes a provost-marshal or an assistant provost-marshal, or any person lawfully exercising authority, or refuses when called upon to assist such person when requiring aid in the execution of his duty ;—or

Striking subordinates.

Article 40.—Who strikes or otherwise ill-treats any soldier or other person attested under these Articles being his subordinate in rank or position ;—or

Extortion.

Article 41.—Who commits extortion ; or, without proper authority, exac from any person carriage, porterage, or provisions ;—or

House-breaking or plundering in time of peace.

Article 42.—Who, in time of peace, commits house-breaking for the purpose of plundering ; or plunders, destroys, or damages any field, garden, or other property ;—or

Neglecting to compensate person injured by subordinate.

Article 43.—Who, being in command at any post, or on the march, and receiving a complaint that any one under his command has beaten, or otherwise maltreated or oppressed any person, or has disturbed any fair or market, or committed any riot or trespass, fails to have due reparation made to the injured person, or to report the case to the proper authority ;—or

Defiling places of worship.

Article 44.—Who, by defiling any place of worship, or otherwise, intentionally insults the religion, or wounds the religious feelings of any person ;—or

Act V. of 1869.

Taking bribes.

Article 45.—Who, directly or indirectly, requires, accepts, or obtains, or agrees to accept, or attempts to obtain, for himself or for any other person, any gratification as a motive or reward for procuring the enlistment or enrolment of any person, or leave of absence, promotion, or any other advantage or indulgence for any person in the service;—or

Causing false alarm in time of peace.

Article 46.—Who, in time of peace, by any means whatever, intentionally occasions a false alarm in camp, garrison, or cantonment;—or

Making away with regimental necessaries.

Article 47.—Who designedly or through neglect kills, injures, or loses his horse, or who dishonestly or fraudulently removes, conceals, or delivers to any person, or who designedly or through neglect injures or loses his arms, clothes, tools, musical or surgical instruments, equipments, ammunition, accoutrements, or regimental necessaries, or any such articles entrusted to him, or belonging to any other person,

or who sells, pawns, destroys, or defaces any medal or decoration granted to him by order of Her Majesty, or of the East India Company, or of the Governor-General of India in Council for service in the field, or for general good conduct;—or

Attempting suicide.

Article 48.—Who attempts to commit suicide, and does any act towards the commission of such offence;—and

Appearing armed in camp.

Article 49.—Any person subject to these Articles below the rank of warrant officer—

Who, when off duty, appears, without proper authority in or about camp or cantonments, or in or about, or when going to, or returning from, any town or bázár, carrying a sword, bludgeon, or other offensive weapon;—or

Sentry sleeping on post in time of peace.

Article 50.—Who, being a sentry, in time of peace, sleeps upon his post, or leaves it before being regularly relieved, or without leave;—or

Absence from camp.

Article 51.—Who, without proper authority, is found two miles or upwards from camp;—or

Absence from cantonment after tattoo.

Article 52.—Who, without proper authority, is absent from his cantonment or lines after tattoo, or from camp after retreat-beating;

Punishment for offences mentioned in Articles 25-52.

Article 53.—Shall, on conviction by any Court-martial competent to try him, be sentenced to such punishment, other than death or transportation, as such Court is, by these Articles, empowered to award.

CHAPTER III.—CRIMES TO BE PUNISHED WITH DISMISSAL FROM THE SERVICE. Act V. of 1869.

Embezzlement.

Article 54.—Any person subject to these Articles—

Who dishonestly misappropriates or converts to his own use any money, provisions, forage, arms, clothing, ammunition, tools, instruments, equipments, or military stores of any kind, the property of Government, entrusted to his charge on the public account, or for any military purpose,

or who dishonestly uses or disposes of such property in violation of any direction of a proper authority,

or who dishonestly receives or retains any such property, knowing or having reason to believe the same to have been dishonestly misappropriated or converted ;—or

Destruction of Government property.

Article 55.—Who wilfully destroys or injures any property of Government entrusted to him on the public account, or for any military purpose ; —or

Giving false evidence.

Article 56.—Who, having been duly sworn or affirmed before any Court-martial, or other military Court competent to administer an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true—

Punishment for offences mentioned in Articles 54, 55, 56.

Article 57.—Shall, if convicted by a General Court-martial, be sentenced to be dismissed the service, and to forfeit any arrears of pay and allowances due to him at the time of dismissal ; and shall be punishable also with imprisonment (with or without hard labour, and with or without solitary confinement) for a term which may extend to three years : and shall, if convicted by a District or Garrison Court-martial, be liable to any or all of the penalties which such Court may inflict for disgraceful conduct.

CHAPTER IV.—DISGRACEFUL CONDUCT.

Malingering.

Article 58.—Any person subject to these Articles —

Who malingers, or feigns, or produces disease or infirmity in himself, or intentionally delays his cure, or aggravates his disease or infirmity ;—or

Wilfully causing hurt.

Article 59.—Who, with intent to render himself or any other person unfit for service, voluntarily causes hurt or voluntarily causes grievous hurt to himself or any other person ;—or

Theft.

Article 60.—Who commits theft in respect of any property of Government, or of any officer or soldier, or of any other person in the service, or of any military mess or band, or of any person serving with or attached to the army, or who dishonestly receives or retains any such property, knowing or having reason to believe it to be stolen ;—or

Act V. of 1869.

Embezzlement of Government property not entrusted on public account.

Article 61.—Who dishonestly misappropriates or converts to his own use any property of Government entrusted to him for any purpose not provided for in Articles 54 and 55,

or who dishonestly receives or retains any such property knowing or having reason to believe it to have been dishonestly misappropriated or converted ; —or

Obtaining pension by false statement.

Article 62.—Who obtains or attempts to obtain for himself, or for any other person, any pension, allowance, or other advantage or privilege by a statement which is false, and which he knows or has reason to believe to be false, or does not know to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement ;—or

Furnishing false returns.

Article 63.—Who knowingly furnishes a false return or report of the number or state of any men under his command or charge, or of any money, arms, ammunition, clothing, equipments, stores, or other property in his charge, whether belonging to such men, or to Government, or to any person in or attached to the army, or who, through design or culpable neglect, omits or refuses to make or send any return or report of the matters aforesaid ;—or

Other fraudulent offences.

Article 64.—Who does any other thing with intent to defraud, or to cause wrongful gain to one person, or wrongful loss to another person ;—or

Cruelty or Indecency.

Article 65.—Who commits any other offence of a cruel, indecent, or unnatural kind, or attempts to commit any such offence, and does any act towards its commission—

Penalties for offences specified in Articles 58-65.

Article 66.—May be tried for disgraceful conduct, and shall, on conviction by a General, District, or Garrison Court-martial, be liable to any or all of the penalties awardable by such Court for disgraceful conduct.

CHAPTER V.—OFFENCES AGAINST COURTS-MARTIAL.

Refusal to attend or be sworn.

Article 67.—Any person subject to these Articles who, when duly summoned to attend as a witness before a Court-martial, intentionally omits to attend, or refuses to be sworn or make affirmation, or to answer any question, or to produce or deliver up any book or document which he may have been duly warned and called upon to produce or deliver up, or prevaricates ;—or

Contempts.

Article 68.—Who intentionally offers any insult or causes any interruption or disturbance to, or uses any menacing or disrespectful word, sign, or gesture, or is insubordinate or violent in the presence of a Court-martial while sitting—

Punishment for offences specified in Articles 67 and 68.

Act V. of 1869.

Article 69.—Shall, on conviction by the same or by any other Court-martial which is competent to try the offender, be liable to such punishments as the convicting Court is, by these Articles, empowered to award.

CHAPTER VI.—UNSPECIFIED OFFENCES.

Article 70.—All offences not punishable with death, all neglects to obey any garrison or other orders, and all acts and omissions, of which any person subject to these Articles is accused, shall, though not specified in these Articles, if they be prejudicial to good order and military discipline, be taken cognizance of and punished according to the nature and degree of the offence, act, or omission by any Court-martial empowered to try the person guilty of such offence, act, or omission.

Abetment.

Article 71.—Every person subject to these Articles who abets, within the meaning of the Indian Penal Code, sections 107 and 108, any of the offences specified in Articles 7, 8, 10, 13, 14, 18, and 19, may be punished with the punishment hereinbefore provided for such offence.

Every such person who abets, within the meaning of the Indian Penal Code, sections 107 and 108, any other offence punishable under this Act, shall be punished,

with imprisonment of any description provided by this Act for the offence so abetted for a term which may extend to one-half of the longest term of such imprisonment,

or with one-half of any other penalty awardable by the Court by which he is convicted,

or, if the offence is punishable with death or transportation for life, with transportation for a term not less than seven years, or with imprisonment (with or without hard labour, and with or without solitary confinement) for a term which may extend to ten years.

The said sections of the Indian Penal Code are set forth in Part II. of the Appendix to this Act.

TITLE III.—JURISDICTION.

CHAPTER I.—COURTS-MARTIAL.

Kinds of Courts-martial.

Article 72.—For the purposes of these Articles, there shall be eight kinds of Courts-martial (that is to say),—

(1.)—General Courts-martial.
(2.)—Detachment General Courts-martial.
(3.)—District Courts-martial.
(4.)—Garrison Courts-martial.
(5.)—Regimental Courts-martial.
(6.)—Regimental Detachment Courts-martial.
(7.)—Detachment Courts-martial, and
(8.)—Summary Courts-martial.

Act V. of 1869.

(1).—*General Court-martial.*

Appointment of General Court-martial.

Article 73.—A General Court-martial may be appointed—

(*a.*)—By the Commander-in-Chief of a presidency :

(*b.*)—By any officer authorized to appoint General Courts-martial by warrant of the Commander-in-Chief of a presidency :

(*c.*)—By any officer in actual command of Native troops who is authorized to appoint General Courts-martial by order of the Governor-General of India in Council, the Governor of Fort St. George in Council, or the Governor of Bombay in Council :

(*d.*)—By any officer commanding Native troops not attached to the forces of a presidency, who is authorized to appoint General Courts-martial by warrant which the Governor-General of India in Council has empowered the Commander-in-Chief in India to issue.

Composition of such Court.

Article 74.—Except as hereinafter provided, every General Court-martial shall, if held in British India, consist of not less than nine commissioned officers, but may, if held out of British India, consist of seven commissioned officers, if a greater number cannot be conveniently assembled.

Composition of such Court appointed under Orders in Council.

Article 75.—A General Court-martial appointed under the authority of an Order in Council shall consist of not less than five commissioned officers, and shall, if so provided in the order, be composed either of European or of Native commissioned officers at the discretion of the officer appointing it.

Powers of such Court.

Article 76.—A General Court-martial shall have power to try all persons subject to these Articles accused of mutiny or of any other offence punishable under this Act, and to pass sentences of

Death,
Transportation for life or for any period not less than seven years,
Imprisonment (with or without hard labour, and with or without solitary confinement) for any term not exceeding fourteen years,
Dismissal from the service,
Suspension from rank, pay, and allowances for any stated period,
Degradation,
Loss of standing,
Reduction to the ranks,
Corporal punishment not exceeding fifty lashes,
Forfeiture of additional pay, good conduct pay, and claim to pension,
Forfeiture of arrears of pay and allowances,
Stoppages.

Whenever any person is convicted of any offence for which he shall be transported or sentenced to imprisonment for a term of seven years or upwards, the Court may adjudge that all the rents and profits of his moveable and immoveable estate during the period of his transportation or imprison-

ment shall be forfeited to Government, subject to such provision for his family and dependents as the Government may think fit to allow during such period. Act V. of 1869.

(2.)—*Detachment General Court-martial.*

Appointment of such Court-martial.

Article 77.—When any portion of Her Majesty's troops is serving in any place not in British India, and not within the dominions of the Princes and States of India in alliance with Her Majesty, wherein Her Majesty's forces are permanently stationed, a Detachment General Court-martial may be appointed—

(*a.*)—By the Commander-in-Chief of a presidency:

(*b.*)—By any officer authorized to appoint Detachment General Courts-martial by warrant of the Commander-in-Chief of a presidency:

(*c.*)—By the officer in actual command of such troops, upon complaint being made of an offence against the person or property of any resident of such place, committed by any person under such officer's command and subject to these Articles.

Its Composition and Powers.

Article 78.—Such Court-martial shall consist of not less than three commissioned officers, and shall have the same powers as a General Court-martial.

(3.)—*District Court-martial and*

(4.)—*Garrison Court-martial.*

Appointment of such Courts.

Article 79.—A District or Garrison Court-martial may be appointed—

(*a.*)—By the Commander-in-Chief of any presidency:

(*b.*)—By any officer authorized to appoint District or Garrison Courts-martial (as the case may be) by warrant of the Commander-in-Chief of any presidency:

(*c.*)—By any officer in actual command of Native troops authorized to appoint District or Garrison Courts-martial (as the case may be) by order of the Governor-General of India in Council, the Governor of Fort St. George in Council, or the Governor of Bombay in Council:

(*d.*)—By any officer commanding Native troops not attached to the forces of a presidency authorized to appoint District or Garrison Courts-martial (as the case may be) by warrant which the Governor-General of India in Council has empowered the Commander-in-Chief in India to issue.

Composition of such Courts.

Article 80.—(*a.*) Except as hereinafter provided, a District or Garrison Court-martial shall consist of seven commissioned officers, unless that number cannot conveniently be assembled, in which case such Court may consist of not less than five such officers.

(*b.*) A District Court-martial appointed under the authority of an Order in Council may consist of any number of commissioned officers not less than three; and may, if so provided in the Order, be composed either of European or of Native commissioned officers at the discretion of the officer appointing it.

Act V. of 1869.

Officers composing such Courts.

Article 81.—A District or Garrison Court-martial may, when necessary, be composed wholly of officers of the regiment or corps to which the accused belongs: Provided that on the trial of a Sub-assistant Surgeon, Hospital-assistant, Native Doctor, or Warrant-officer, not more than two officers of the same regiment, corps, detachment, depôt, or department as the accused, shall sit upon any such Court.

Powers of such Courts.

Article 82.—A District or Garrison Court-martial shall have power to try all persons subject to these Articles, other than commissioned officers, for any offence other than mutiny made punishable by these Articles, and to pass sentences of—

Imprisonment (with or without hard labour, and with or without solitary confinement) for a term not exceeding one year,
Dismissal from the service,
Suspension from rank, pay, and allowances,
Degradation,
Loss of standing,
Reduction to the ranks,
Corporal punishment not exceeding fifty lashes,
Forfeiture of additional pay, good conduct pay, and claim to pension,
Forfeiture of arrears of pay and allowances,
Stoppages.

(5.)—*Regimental Court-martial.*

Appointment of such Court.

Article 83.—A Regimental Court-martial may be appointed by the officer commanding any regiment or corps.

Composition of such Court.

Article 84.—A Regimental Court-martial shall consist of not less than five commissioned officers, unless that number cannot conveniently be assembled, in which case such Court may consist of not less than three such officers.

Powers of such Court.

Article 85.—A Regimental Court-martial shall have power to try—

(*a.*)—All persons subject to these Articles, other than commissioned officers, Sub-assistant Surgeons, Hospital-assistants, Native Doctors, and Warrant-officers, for any offence other than mutiny, desertion, or disgraceful conduct, punishable under these Articles, when committed on the line of march, or on board any vessel;

(*b.*)—Any offence punishable under this Act, and not within the ordinary jurisdiction of a Regimental Court-martial, other than mutiny, desertion, and disgraceful conduct, when the officer commanding the division or district directs it to be tried by a Regimental Court-martial; and

(*c.*)—Any offence punishable under these Articles, other than offences not within the ordinary jurisdiction of a Regimental Court-martial—

and to pass sentences of—

Dismissal,
Loss of standing,
Reduction to the ranks,

Imprisonment (with or without hard labour, and with or without solitary confinement) for a term not exceeding six months, Act V. of 1869.
Corporal punishment not exceeding fifty lashes,
Forfeiture of arrears of pay and allowances,
Stoppages.

(6.)—*Regimental Detachment Court-martial and*
(7.)—*Detachment Court-martial.*

Appointment of Regimental Detachment Court-martial.

Article 86.—A Regimental Detachment Court-martial may be appointed by the officer commanding a detachment of his own regiment or corps.

Appointment of Detachment Court-martial.

Article 87.—A Detachment Court-martial may be appointed—

(*a.*)—By the officer commanding any station, force, or detachment of men of different regiments or corps:

(*b.*)—By the officer in command of any detachment when any offence, not within the ordinary jurisdiction of a Regimental Court-martial (other than mutiny, desertion, or disgraceful conduct), is committed on the line of march, or on board any vessel.

Composition of such Courts.

Article 88.—A Regimental Detachment Court-martial and a Detachment Court-martial shall consist of not less than five commissioned officers, unless that number cannot conveniently be assembled, in which case such Court may consist of not less than three commissioned officers.

Powers of such Courts.

Article 89.—A Regimental Detachment Court-martial and a Detachment Court-martial shall have the same powers as a Regimental Court-martial.

(8.)—*Summary Courts-martial.*

Article 90.—(*a.*) Subject to the provisions and restrictions contained in Articles 91, 92, 93, 94, 125, and 126, a summary Court-martial may be held by the European commissioned officer who is in actual command, for the time being, of any regiment or corps,

or of any detachment consisting of, or equivalent in strength to, three troops or companies,

or of any European corps or detachment to which Native details subject to these Articles are attached,

or who is in charge of any arsenal, ordnance establishment, or camp equipage depôt.

(*b.*) In detached situations, beyond sea, or out of British India, or on service in the field, or under any circumstances where, immediate example being necessary, a Detachment Court-martial cannot be assembled as provided in Article 87, and reference cannot be made to superior authority without detriment to the service, a summary Court-martial may be held by the European commissioned officer commanding a detachment of any strength :

Act V. of 1869. Provided that if the officer is of less than five years' standing, he shall not carry into effect any sentence by such Court-martial, until it has received the approval of the nearest superior military officer holding a command of not less than a regiment.

Constitution of such Courts.

Article 91.—At every summary Court-martial, the commanding officer holding it shall alone constitute the Court.

Persons triable by such Court.

Article 92.—No commanding officer shall have power to try by a Summary Court-martial any commissioned officer, Sub assistant Surgeon, Hospital-assistant, Native Doctor, or Warrant-officer, or any person who is not liable to trial by Courts composed of Native commissioned officers; but all other persons subject to these Articles shall be liable to trial and punishment by a Summary Court-martial:

Provided that no person shall be so tried unless he is under the command of the officer holding the trial.

Offences triable by such Court.

Article 93.—Any offence against these Articles, except mutiny, may be tried and punished by Summary Court-martial:

Provided that, when there is no emergent reason for immediate action, and reference can, without detriment to discipline, be made to superior military authority, a commanding officer shall not try by Summary Court-martial, without such reference, any of the following offences:—

Offences under Articles 8 to 23, both inclusive, ordinarily punishable by General Court-martial only:

Disgraceful offences under Articles 54, 55, 56, 60, 61, and 64; and

Offences against such commanding officer.

Its powers.

Article 94.— A Summary Court-martial held by any officer commanding a regiment or corps may award any sentence not exceeding that awardable by a District Court-martial.

A Summary Court-martial held by any commanding officer other than the officer commanding a regiment or corps may award any sentence not exceeding that awardable by a Regimental or Detachment Court-martial.

Trial of grave offences by inferior Courts.

Article 95.—Save as provided by Article 85, clauses (*a*) and (*b*), and Article 89, no commanding officer shall try, by a Regimental or Detachment Court-martial, offences which are by these Articles declared to be punishable by a General, District, or Garrison Court-martial only. But, as it may be expedient that some such offences should be tried by inferior Courts-martial, the commanding officer of any regiment, corps, or detachment shall, in every such instance, submit the case for the orders of the officer commanding the division or district in which he is serving, and the officer commanding such division or district, whether on or without such application, may direct trial by such kind of Court-martial as he thinks fit:

Provided that mutiny shall in no case be tried save by a General Court-martial, and that desertion and disgraceful conduct shall in no case be tried by any Court-martial inferior to a District or Garrison Court-martial. Act V. of 1869.

The permission to try grave offences by District or Garrison, Regimental or Detachment Courts-martial, shall be entered upon the proceedings of such Court, and in the monthly return of trials furnished to Army Head-Quarters.

Courts composed of European Officers.

Article 96.—The Governor-General of India, or the Governor of any presidency, may, by an Order in Council, direct that any Court-martial appointed under these Articles, shall be composed of European instead of Native commissioned officers, or authorize any general or other officers to appoint Courts-martial so composed at his discretion.

Any such Court-martial shall in such case be constituted accordingly, but shall in all other respects be governed by these Articles.

Claim to be tried by European Officers.

Article 97.—With the exception of cases of trial by Courts-martial appointed under Orders in Council, every person subject to these Articles, who is under orders for trial by Courts-martial, may claim to be tried by European officers.

When any such claim is made, the Court, whether a General, District, Garrison, Regimental, or Detachment Court-martial, shall be composed of European instead of Native commissioned officers; but shall in all other respects be governed by these Articles.

CHAPTER II.—PROCEDURE.

Limitation of trials.

Article 98.—No person subject to these Articles shall be tried or punished by a Court-martial for any military offence after the expiration of three years from the date of such offence, unless the offender, by reason of absence or of some other manifest impediment, could not be arrested or confined and brought to trial within that period; in which case he shall be liable to be tried at any time not exceeding two years after such impediment shall have ceased.

Place of trial.

Article 99.—Any person subject to these Articles who commits any offence against them may be tried and punished for such offence in any place whatever in the same manner as if the offence had been committed in such place.

Arrest or confinement of accused.

Article 100.—Whenever any person subject to these Articles is accused of any military offence which his commanding or other superior officer considers should be tried by Court-martial, such officer shall order the accused, if not below the rank of non-commissioned officer, to be placed in arrest, or, if below such rank, to be put in confinement, until he can be tried by a court-martial, or discharged by proper authority.

No such person shall be detained in arrest or confinement longer than is necessary for the purposes of justice.

Act V. of 1869.

Judge Advocate.

Article 101.—It shall not be necessary to appoint a Judge Advocate to any General Court-martial appointed under the authority of an Order in Council. But every other General Court-martial shall be attended by a Judge Advocate, who shall conduct the proceedings; and every District or Garrison, Regimental or Detachment Court-martial, composed of Native commissioned officers, shall be attended by an European superintending officer of not less than four years' service, who shall conduct the proceedings.

Interpreter.

Article 102.—An interpreter shall be appointed to every Court-martial, and shall, when the Court is composed of Native officers, form part of such Court.

If no duly-qualified interpreter is available at the station or place where the Court-martial sits, the officer appointing the Court, or the officer commanding in the division, district, or place within or at which the trial is to be held, shall appoint any competent person to perform the duty of interpreter.

When no other qualified or competent person is available, the superintending officer, or in the case of an European Court, the president, shall perform the duty of interpreter.

No interpreter shall, as such, have a vote upon any matter.

President.

Article 103.—At every Court-martial, whether composed of European or Native commissioned officers, the senior officer shall sit as president, without special appointment as such.

In case of the death or unavoidable absence of the president, the next senior member shall take the place of president, without special appointment as such, and the trial shall proceed if the Court be still composed of the smallest number of members of which it is required by these Articles to consist.

Conduct of Proceedings.

Article 104.—In the case of any General Court-martial appointed under an Order in Council, or of any other Court-martial composed of European commissioned officers under Article 96 or 97, the president shall conduct the proceedings.

Precedence of Native Officers.

Article 105.—Risáldár majors and súbahdár majors shall take precedence according to the dates of their commissions, and above all súbahdárs or risáldárs.

Sirdár bahádurs and bahádurs shall take rank only according to their respective commissions of risáldár major, súbahdár major, risáldár, súbahdár, or jamadár.

Risáldárs shall take rank with súbahdárs, according to the dates of their commissions as risáldárs, or if they have not been risáldárs then according to the dates of their commissions as risáldárs.

Time of Trial, adjournment, and re-assembly.

Article 106.—Trials by Courts-martial may be carried on at any time without restriction.

The date and hour of the Court's original assembly shall be fixed by, or under the orders of, the convening officer; but the adjournment and re-assembly of a Court-martial shall be determined by the Court itself. Act V of 1869.

Challenges.

Article 107.—At all trials by Courts-martial other than Courts-martial appointed under an Order in Council or Summary Courts-martial, as soon as the Court is assembled, the names of the president and members shall be read over to the prisoner, who shall thereupon be asked by the officer conducting the proceedings, whether he objects to being tried by any officer sitting on the Court.

If the prisoner objects to any such officer, his objection, and also the reply thereto of the officer objected to, shall be heard and recorded, and the remaining officers of the Court shall, in the absence of the challenged officer, decide on the objection.

When no challenge is made, or when challenge has been made and disallowed, or the place of every officer successfully challenged has been filled by another officer to whom no objection is made or admitted, the Court shall proceed as hereinafter provided.

Interpreter's oath.

Article 108.—The officer conducting the proceeding shall then administer to the interpreter, or, when necessary, shall himself make as interpreter, an affirmation or oath * as follows :—

"I solemnly affirm, in the presence of Almighty God, that I will faithfully interpret and translate the proceedings of this Court; and that I will not divulge the sentence until it shall have been published by authority; and, further, that I will not disclose or discover the vote or opinion of any particular member of the Court unless required to give evidence thereof by a Court of Justice or Court-martial, in due course of law."

When oath is made instead of affirmation, the oath shall commence—

"I do swear that I will faithfully interpret," &c., and shall be in all other respects in the above form, and shall end with the words, "So help me God."

Oaths of President and Members.

Article 109.—The interpreter, or the officer conducting the proceedings, shall then administer to the president and each of the members of the Court-martial an affirmation or oath in such of the following forms as shall be appropriate :—

For European Officers.

"I solemnly affirm, in the presence of Almighty God, that I will duly administer justice, according to the Indian Articles of War, without partiality, favour, or affection; and if any doubt shall arise, then, according to my conscience, the best of my understanding, and the custom of war in the like cases; and that I will not divulge the sentence of the Court until it shall be published by authority; and, further, that I will not disclose or discover the

* The Indian Oaths Act, No. X. of 1873, does not apply to proceedings before Courts-martial.—See section 3.

Act V. of 1869.

vote or opinion of any particular member of the Court, unless required to give evidence thereof by a Court of Justice or a Court-martial, in due course of law."

When oath is made instead of affirmation, the oath shall commence—

"I do swear that I will duly administer justice," &c., and shall be in all other respects in the above form, and shall end with the words, "So help me God."

For Native Officers of the Mussulman or Hindu Religion, or of any other Religion for which it may be appropriate.

"I solemnly affirm, in the presence of Almighty God, that I will duly administer justice according to the Indian Articles of War, without partiality, favour, or affection; and if any doubt shall arise, then according to my conscience, the best of my understanding, and the custom of war in the like cases; and that I will not divulge the sentence of the Court until it shall be published by authority; and, further, that I will not disclose or discover the vote or opinion of any particular member of the Court, unless required to give evidence thereof by a Court of Justice or a Court-martial, in due course of law."

Judge Advocate's Oath.

Article 110.—The interpreter, or any other European officer of the Court, shall then administer to the Judge Advocate, or superintending officer, the following affirmation or the following oath: —

"I solemnly affirm, in the presence of Almighty God, that I will not, upon any account whatsoever, disclose or discover the vote or opinion of any particular member of the Court-martial, unless required to give evidence thereof as a witness by a Court of Justice or a Court-martial in due course of law; and that I will not, unless it be necessary for the due discharge of my official duties, disclose the sentence of the Court until it shall be published by authority."

When oath is made instead of affirmation, the oath shall commence—

"I do swear that I will not, upon any account whatsoever, disclose," &c., and shall be in all other respects in the above form, and shall end with the words, "So help me God."

Oaths of Witnesses.

Article 111.—Every person giving evidence at a Court-martial shall be examined on oath, or on affirmation, where affirmation is appropriate and admissible, and shall be duly sworn or affirmed in such of the following forms as may be appropriate:—

For Europeans and Persons professing the Christian Religion.

"I do swear that what I shall state shall be the truth, the whole truth, and nothing but the truth. So help me God—"

or

"I solemnly affirm, in the presence of Almighty God, that what I shall state shall be the truth, the whole truth, and nothing but the truth."

For Mussulman, Hindu, or other Native Witnesses.

"I solemnly affirm, in the presence of Almighty God, that what I shall state shall be the truth, the whole truth, and nothing but the truth."

Oaths to be binding on conscience.

Article 112.—If none of the forms of oath or affirmation prescribed in Articles 108 to 111, both inclusive, are appropriate to any officer of a Court-martial, or any witness, such officer or witness shall make oath or affirmation to the purport hereinbefore prescribed, in such form as the Court ascertains to be according to his religion or otherwise binding on his conscience.

Re-swearing in case of several trials.

Article 113.—When more trials than one are held by the same Court-martial, every officer of the Court, and every witness before the Court, shall make a fresh oath or affirmation, as hereinbefore prescribed, notwithstanding any previous oath or affirmation.

Presumptive evidence of desertion.

Article 114.—If at any trial for desertion, it is proved that the person tried has been absent without authority for the space of two months, such proof shall be deemed sufficient presumptive evidence of desertion; and the Court may thereupon convict him of desertion, unless he proves that his absence was not wilful, or otherwise rebuts the presumption of desertion arising from the proof of his unauthorized absence.

Reference by prisoner to Government Officer.

Article 115.—If at any trial for desertion, absence without leave, overstaying leave, or not rejoining when warned for service, the person tried states, in his defence, any sufficient or reasonable excuse for his unauthorized absence, and refers in support thereof to any officer in the civil or military service of Government, or if it appears that any such officer is likely to prove or disprove the said statement in the defence, the Court shall address such officer, and adjourn until his reply is received.

The written reply of any officer so referred to shall, if signed by him, be received in evidence, and have the same effect as if made on oath or affirmation before the Court.

If the Court is dissolved before the receipt of such reply, or if the Court omits to comply with the provisions of this Article, the convening officer may, at his discretion, annul the proceedings and order a fresh trial by the same or another Court-martial.

Trial for desertion.

Article 116.—On any trial for desertion the accused may be found guilty either of desertion or of absence without leave.

Evidence of previous convictions and general character.

Article 117.—When any person subject to these Articles has been convicted by a Court-martial of any military offence, such Court-martial shall enquire into, and receive and record evidence of any previous convictions of such

Act V. of 1869.

person, either by a Court-martial, or by a Court of Justice; and shall further, in the case of any person below the rank of a warrant-officer, enquire into and record the general character of such person.

Evidence received under this Article may be either oral, or in the shape of entries in, or certified extracts from, the Court-martial books; and it shall not be necessary to prove the signature to such certified extract, nor shall it be necessary to give notice before trial to the person tried that evidence as to his previous convictions or character will be received.

Voting of Members.

Article 118.—The members of a Court-martial shall preserve order; and, in giving their votes upon any matter, shall begin with the junior in rank.

Except where otherwise specially provided, every decision shall be passed by a majority of votes; and where there is an equality of votes, as to either finding or sentence, the decision shall be in favour of the person tried.

In matters other than the finding or sentence, the president shall have a casting vote.

Majority requisite to sentence of death.

Article 119.—No sentence of death shall be passed by any General Court-martial, other than a General Court-martial held under an Order in Council unless such sentence is concurred in by at least two-thirds of the officers composing the Court, or by five out of seven, or four out of five officers, when the Court consists of either of those numbers.

A General Court-martial held under an Order in Council may, by the votes of a majority of such Court, pass a sentence of death.

Revision of finding or sentence.

Article 120.—The finding or sentence of any Court-martial may be revised by order of the officer authorized to dispose of the proceedings.

But no finding or sentence of a Court-martial shall be revised more than once; nor shall any evidence, save evidence as to previous convictions or general character, be received on a revision.

The Court, on revision, shall consist of the same, and the same number of, officers as were present when the original decision was passed unless any such officer or officers shall be unavoidably absent.

In case of such unavoidable absence, the cause thereof shall be duly certified in the proceedings, and the Court shall proceed with the revision, provided it still consists of the smallest number of officers of which such Court is by these Articles required to consist.

Procedure to be generally followed.

Article 121.—The procedure laid down in the Articles 106 to 119 (both inclusive) shall be adopted at all trials by Courts-martial save when otherwise specially ordered or provided.

Summoning Witnesses.

Article 122.—The Judge Advocate, in the case of a General Court-martial, and the officer ordering the trial in the case of any other Court-martial, may, by summons under his hand, require the attendance before the

Court, at a time and place to be mentioned in the summons, of any person, either to give evidence or to produce documents. Act V, of 1869.

In the case of a witness amenable to military authority, the summons shall be sent to the officer in actual command of the corps to which he belongs, and such officer shall serve it upon him accordingly.

In the case of any other witness, the summons shall be sent to the Magistrate within whose jurisdiction he may be, or resides, and such Magistrate shall give effect to the summons as if the witness were required in the Court of such Magistrate.

When a witness is required to produce any particular document in his possession or power, the summons shall describe it with convenient certainty.

Contempts of Court.

Article 123.—Any witness duly summoned, or any other person who commits any contempt of Court in the presence of a Court-martial, or who commits any of the offences described in Article 56, 67, or 68, shall, if subject to these Articles, be proceeded against as they direct; and shall, if not so subject, be delivered over to a Magistrate, who shall proceed against the offender in the same manner as if the offence had been committed before or towards a Court of criminal justice.

Privilege of witnesses.

Article 124.—Every witness, while proceeding to, attending on, or returning from, any Court-martial before which he has been summoned, shall be privileged from arrest in any civil suit or proceeding; and if arrested in any such suit or proceeding, may be discharged by order of such Court-martial.

SUMMARY COURTS-MARTIAL.

Persons to attend Summary Court-martial.

Article 125.—Every Summary Court-martial shall be attended by two commissioned officers, European or Native, exclusive of the commanding officer holding the trial.

An interpreter shall, in every case, attend at a Summary Court-martial, but when no other competent interpreter is available, the officer holding the trial, or one of the officers in attendance thereat, may perform the duty of interpreter.

No interpreter shall, as such, have a vote upon any matter.

Proceedings of such Courts.

Article 126.—The proceedings of every Summary Court-martial shall be conducted in presence of all the officers specified in Article 125, and shall be recorded in the English language in the manner usual at other Courts-martial.

Oaths of Interpreter and Officer holding trial.

Article 127.—The interpreter at a Summary Court-martial shall first make oath or affirmation, as provided by Article 108, down to the words "published by authority;" and the commanding officer holding the trial shall then make oath or affirmation, as provided in Article 109, down to the words "custom of war in the like cases."

The officers in attendance shall not, as such, be sworn or affirmed.

Act V. of 1869.

Evidence.

Article 128.—All evidence at a Summary Court-martial shall be taken on oath or affirmation, as provided by Article 111.

Any previous convictions on record against the offender, and his general character, shall be recorded by the commanding officer as of his own knowledge, or proved as provided by Article 117.

Signature and transmission of proceedings.

Article 129.—The proceedings in every case in which a Regimental Court-martial or a Detachment Court-martial tries an offence not within the ordinary jurisdiction of a Regimental Court-martial, committed on the line of march or on board a vessel, shall be sent for the information of the Commander-in-Chief of the presidency to which the regiment or detachment belongs, and of the presidency within which they may be, or to which they are proceeding.

The proceedings of every Summary Court-martial shall, when closed, be signed by the commanding officer and the officers attending the trial, and shall, without delay, be forwarded to the officer commanding the division or district within which the trial was held; and such officer, or the Commander-in-Chief in India, or of the Presidency in which the trial was held, is hereby authorized to set aside the trial for reasons based on the merits of the case, but not on any merely technical grounds.

When a Summary Court-martial is held in a force not attached to any presidency, the officer commanding such force may exercise the powers given in this Article in regard to setting aside trials.

The proceedings of every other Court-martial shall, when closed, be signed by the members, and shall, without delay, be forwarded or delivered to the officer under whose orders the trial has been held.

CHAPTER III.—SENTENCES.

Of General Courts-martial.

Article 130 (a.)—Any General Court-martial may, for any offence falling under Articles 7 to 23, both inclusive, and for such offences only, sentence any person subject to its jurisdiction to death, or to transportation for life, or for any period not less than seven years, or to imprisonment (with or without hard labour, and with or without solitary confinement) for any period not exceeding fourteen years.

(*b.*)—Any General Court-martial may, for any offence falling under Article 54, 55, or 56 of these Articles, sentence any person as aforesaid to the penalties attached to such offences in Article 57, and may, for any other disgraceful conduct, award the penalties attached to that offence in Articles 136, 137, and 138.

(*c.*)—Any General Court-martial may, in any case where no special punishments are prescribed, or, in addition to any special punishment, where so authorized, sentence any person amenable thereto to any punishment specified in Articles 131, 132, 133, 135, 137, and 138.

(*d.*)—No Court-martial, other than a General Court-martial, shall have power to award a sentence of death, transportation, or imprisonment exceeding one year.

Any General Court-martial may sentence any commissioned officer to be dismissed the service or to be suspended from rank, pay, and allowances for any stated period; or to be placed one or more steps lower in the list of his rank. Act V. of 1869.

No Court-martial, other than a General Court-martial, shall have power to try or punish a commissioned officer.

Of General, District, or Garrison Court-martial.

Article 131.—Any General, District, or Garrison Court-martial, may sentence a sub-assistant surgeon, hospital-assistant, native doctor, or warrant-officer to be dismissed the service; or to be suspended from rank, pay, and allowances for any stated period; or to be reduced to a lower grade or class in his department, or to be placed one or more steps lower in the list of his rank.

No Court-martial inferior to a District or Garrison Court-martial shall have power to try or punish any sub-assistant surgeon, hospital-assistant, native doctor, or warrant-officer.

Reduction, dismissal, corporal punishment, and imprisonment.

Article 132.—Any Court-martial may sentence a non-commissioned officer to be reduced to the ranks; or to be placed one or more steps lower in the list of his rank;

or may sentence any person subject to these Articles, below the rank of warrant-officer, to be dismissed the service; or to suffer corporal punishment not exceeding fifty lashes; or to imprisonment with or without hard labour, and with or without solitary confinement, for such periods as are hereinafter prescribed.

Limit of imprisonment.

Article 133.—Except in the cases provided for in Articles 24 and 57, the limit of imprisonment, whether with or without hard labour and solitary confinement, awardable by Courts-martial under these Articles, shall be—for General Courts-martial, two years; for District or Garrison Courts-martial, one year; and for Regimental or Detachment Courts-martial, six months.

Solitary confinement.

Article 134.—No person shall, under any such sentence, or under one or more sentences, be kept in solitary confinement more than eighty-four days in one year, or more than fourteen days at one time, and there shall be, between the periods of solitary confinement, intervals of ordinary imprisonment at least equal to the period of solitary confinement.

Reduction to ranks.

Article 135.—No non-commissioned officer shall be sentenced by any Court-martial to imprisonment or to corporal punishment, without being first sentenced to reduction to the ranks.

Forfeiture of pay and pension.

Article 136.—On a conviction of any disgraceful conduct, a General, District, or Garrison Court-martial may, in addition to any other punishment which it is empowered to award, sentence the offender to forfeit all advantage as to

Act V. of 1869.

additional pay, good-conduct pay, and claim to pension on discharge, which might otherwise have accrued from the length or nature of his former service; or to forfeit all such advantage absolutely, whether it has accrued from former service or may accrue from future service.

Forfeiture of arrears of pay.

Article 137.—On any conviction of disgraceful conduct, if the offender be sentenced to dismissal from the service, or if his sentence involve dismissal under Article 155 or Article 157, he shall further be sentenced to forfeit any arrears of pay and allowances, or other public money, due to him at the time of his dismissal, or such portion thereof as may be required to make good any proved loss or damage arising out of his disgraceful conduct.

Any Court-martial may, in addition to dismissal, or to any punishment involving dismissal under Article 157, sentence any person whom it is authorized to try, to forfeit any arrears of pay and allowances, or other public money, due to him at the time of his dismissal, or such portion thereof as may be required to make good any proved loss or damage arising out of his misconduct.

Stoppages.

Article 138.—Every offender convicted of disgraceful conduct, whose dismissal from the service is not so awarded or involved as aforesaid, shall, in addition to any other punishment, be sentenced by the Court to be put under stoppages, to the extent provided by Article 139, until the amount of any proved loss or damage arising out of such conduct be made good.

And any Court-martial, in addition to any punishment other than, or not involving, dismissal, may sentence any person as aforesaid to be put under stoppages, to the extent specified in Article 139, until any proved loss or damage arising out of his misconduct be made good.

Extent of Stoppages.

Article 139.—Stoppages under Article 138 shall not be awarded, whether under one or more than one sentence, to a greater extent than, in the case of an officer, two-thirds, or in the case of any other person, one-half of his monthly pay and allowances; and shall not be so awarded as to extend beyond one year.

Any public money issued to the offender within the said period of one year shall, for the purposes of this Article, be deemed to be pay and allowances.

Sentence of Transportation or Imprisonment on person already sentenced.

Article 140.—Whenever a sentence of transportation or imprisonment is passed by any Court-martial upon an offender already under sentence of transportation for a limited term, or of imprisonment, the Court may award transportation or imprisonment to commence on the expiration of such previous sentence; notwithstanding that the aggregate of any terms of imprisonment may thus exceed the limit of imprisonment which such Court is by these Articles empowered to award.

Form of sentence of death.

Article 141.—In awarding a sentence of death, a General Court-martial shall, at its discretion, direct that the offender shall "suffer death by being hanged by the neck until he be dead," or shall "suffer death by being shot to death."

CHAPTER IV.—CONFIRMATION AND COMMUTATION OF SENTENCES.

Act V. of 1869.

Sentences to be confirmed or otherwise disposed of.

Article 142.—Save in the case of a Summary Court-martial, no decision or senctence of any Court-martial shall be carried into effect until confirmed or otherwise disposed of by—

(*a.*)—In the case of any Court-martial for the trial of any person within his command—the Commander-in-Chief of a presidency : or

(*b.*)—In the case of any Court-martial for the trial of any person under his command—any officer authorized in this behalf by warrant of the Commander-in-Chief of any presidency, but subject to any restrictions contained in the warrant : or

(*c.*)—In the case of any Court-martial for the trial of any person under his command—any officer in actual command of troops, who is authorized in this behalf by the Governor-General of India in Council, the Governor of Fort Saint George in Council, or the Governor of Bombay in Council :

(*d.*)—In the case of any Court-martial for the trial of any person under his command—any officer commanding Native troops not attached to the forces of a presidency, who is authorized in this behalf by warrant of the Commander-in-Chief in India :

(*e.*)—In the case of a Detachment General Court-martial held beyond the limits of British India, and not within the dominions of the Princes and States of India in alliance with Her Majesty—the officer appointing such Court-martial, unless the sentence of such Court-martial exceeds that awardable by a District or Garrison Court-martial, in which case the commander of Her Majesty's forces with which the offender is serving shall alone have power to confirm, remit, commute, or annul such sentence :

(*f.*)—In the case of a Regimental Court-martial for the trial of any person under his command—the officer appointing such Court-martial :

(*g.*)—In the case of a Regimental or other Detachment Court-martial for the trial of any person under his command, where the detachment consists of, or is equal in strength to, three troops or companies—the commanding officer :

(*h.*)—But, when any such Court-martial is held in a detachment of less than, or not equal in strength to, three troops or companies, the sentence shall be submitted for confirmation to the officer commanding the prisoner's regiment, or to the nearest superior officer holding a command of not less than a regiment, who is hereby empowered to dispose of such sentence in like manner as if the trial had been held by his own order :

Provided that, in detached situations beyond sea, or out of British India, or on service in the field, or in cases where immediate example is necessary, and reference cannot be made to such regimental or other superior commanding officer without detriment to the service, the officer commanding any detachment, whatever its strength, may dispose of and carry out the sentence of any Detachment Court-martial held by his order.

(*i.*)—Any Commander-in-Chief or officer mentioned in clauses (*a*), (*b*), (*c*), (*d*), (*e*), (*f*), and (*g*) of this Article may, subject to the provisions of these Articles, and to the restrictions (if any) in the warrant (if any) by which he is authorized in this behalf, mitigate, remit, commute, or annul any sentence to the execution of which his confirmation is necessary.

Act V. of 1869.

Sentence of death.

Article 143.—When a sentence of death has been passed by any General Court-martial, the officer so authorized, in accordance with these Articles, may confirm such sentence, and cause it to be carried into effect, or may, in lieu thereof, sentence the offender to transportation for life, or for any term not less than seven years, or to imprisonment (with or without hard labour, and with or without solitary confinement) for any term not exceeding fourteen years.

Sentence of penal servitude or transportation.

Article 144.—Notwithstanding anything hereinbefore contained, whenever any person, being an European or American, or a legitimate lineal descendant of an European or American, is convicted of an offence punishable under these Articles with transportation, the Court shall sentence the offender to penal servitude instead of transportation, according to the provisions of Act No. XXIV. of 1855.

When a sentence of transportation has been awarded by any General Court-martial, the officer authorized in accordance with these Articles may confirm the sentence, and cause it to be carried into effect, or may, in lieu thereof, sentence the offender to imprisonment (with or without hard labour, and with or without solitary confinement) for any term not exceeding fourteen years, and not exceeding the term of transportation awarded by the Court.

Sentence of dismissal on Commissioned Officers, &c.

Article 145.—A sentence of dismissal from the service passed by any Court-martial under these Articles upon a commissioned officer, sub-assistant surgeon, hospital-assistant, native doctor, or warrant-officer, may be commuted, by the officer duly authorized to confirm or otherwise dispose of such sentence, to suspension from rank, pay, and allowances for any stated period.

Any sentence on Commissioned Officers, &c.

Article 146.—Except on foreign service, or when reference cannot, without detriment to discipline, be made to superior military authority, no decision or sentence passed upon any commissioned officer, sub-assistant surgeon, hospital-assistant, native doctor, or warrant-officer shall be carried into effect until confirmed or otherwise disposed of by the Commander-in-Chief of the presidency to which the offender belongs, or, when the offender is serving in a presidency, by the Commander-in-Chief of such presidency, or, when the offender belongs to a force not attached to any presidency, by the officer commanding the force.

Sentence of corporal punishment.

Article 147.—A sentence of corporal punishment passed by any Court-martial may be commuted, by the officer authorized to confirm or otherwise dispose of such sentence, to dismissal from the service, or to imprisonment without hard labour, and with or without solitary confinement, for any period not exceeding one year, which might have been awarded by such Court-martial.

Sentence of imprisonment with hard labour.

Article 148.—A sentence of imprisonment with hard labour passed by any Court-martial may be commuted, by the officer authorized to confirm or otherwise dispose of such sentence, to dismissal from the service, or to impri-

sonment without hard labour, and with or without solitary confinement, for the term mentioned in the sentence, or for any shorter term. Act V. of 1869.

Sentence of reduction with corporal punishment or imprisonment.

Article 149.—The officer duly authorized to confirm or otherwise dispose of the sentence of any Court-martial may, in the case of a non-commissioned officer sentenced by any such Court, mitigate a sentence of reduction to the ranks followed by corporal punishment or imprisonment to reduction only,

Commutation of sentence of dismissal on Non-commissioned Officers.

or may commute a sentence of dismissal from the service to reduction to the ranks.

CHAPTER V.—Execution of Sentences.

Transportation.

Article 150.—Whenever the sentence of a General Court-martial awarding transportation is duly confirmed, or whenever a sentence of death is duly commuted to transportation, the offender shall be delivered over, with a warrant of commitment containing an authenticated copy of the sentence or commuted sentence, to the officer in charge of the nearest jail; and such officer shall give effect to the sentence accordingly, under such order as he may receive from the Local Government.

Imprisonment with hard labour.

Article 151.—Whenever the duly-confirmed sentence of any Court-martial awards imprisonment with hard labour, or whenever the sentence of any Court-martial is duly commuted to such imprisonment, the offender shall be delivered over, with a warrant of commitment containing an authenticated copy of the said sentence or commuted sentence, to the officer in charge of the nearest jail; and such officer shall detain the offender, under the rules in force, in such jail, according to the exigency of the warrant, or until he is discharged by due course of law.

Place of imprisonment.

Article 152.—The Commander-in-Chief of a presidency may, as occasion requires, direct that any person under his command, and sentenced under these Articles to imprisonment, shall be confined in any jail or other fit place for confinement situate within the local limits of such command, or may order his removal from any place of confinement under military control to any other such place, or to any jail or other fit place of confinement situate within such local limits.

The officer commanding any force not attached to any presidency shall have the like powers so far as regards persons under his command and jails or other places of confinement situate within the local limits of such command.

Transfer to military custody.

Article 153.—When any person subject to these Articles is confined in any jail or other place not subject to military control, under a sentence of transportation or imprisonment, whether passed by a Court-martial or by a Court

Act V. of 1869. of criminal justice, the Government of India, or the Local Government of the presidency or place wherein such person is confined, may order his transfer to military custody,

or may order his removal from one to any other such place of confinement within the territories of such Government.

The period during which such person is in custody during his removal shall be reckoned as part of his term of transportation or imprisonment.

Forfeiture of pay during imprisonment.

Article 154.—Any person subject to these Articles in receipt of public pay, who is imprisoned in any place under the sentence or commuted sentence of a Court-martial or a Court of criminal justice, shall, during such imprisonment, if his sentence does not involve dismissal under Article 155 or Article 157, forfeit all pay and allowances, and be entitled to subsistence only, according to the rates prescribed in the regulations of the Government to which he is subject.

And any such person in confinement in any place whatsoever, whether as a punishment by his commanding officer, or under any charge of which he is subsequently convicted, shall, during such confinement, forfeit all pay and allowances, and be entitled to subsistence only, according to the regulations of the Government to which he is subject.

Striking Convict off strength of Regiment.

Article 155.—Every person sentenced by any Court-martial, or by any Court exercising jurisdiction in criminal cases, to transportation or to imprisonment with hard labour for any term exceeding three months, shall, in the case of a sentence by a Court-martial from the date of confirmation of such sentence, and in the case of a sentence by a Criminal Court, from the date of such sentence, be struck off the strength of the regiment, corps, or department to which he belongs.

Non-re-admission of Convict.

Article 156.—No person who has undergone any such period of transportation or imprisonment with hard labour shall be re-admitted to the service, or be entitled to any pension:

Provided that in the case of any illegal sentence duly annulled as aforesaid, or of a pardon under Article 160, such person may, by order of the Government when the offence is non-military, or by order of the Commander-in-Chief of the presidency when the offence is military, be re-admitted to service or pension, as the case may be.

Dismissal with ignominy.

Article 157.—Any person below the rank of warrant-officer sentenced under the Articles to dismissal, or to imprisonment with hard labour, or to corporal punishment for disgraceful conduct, shall, on the confirmation of such sentence, be dismissed with ignominy from the service.

Publication of sentence for disgraceful conduct.

Article 158.—A copy of every confirmed sentence of dismissal, imprisonment with hard labour, or corporal punishment for disgraceful conduct, and of the orders passed thereupon, shall be sent by the Adjutant-General of the

Army to the chief civil or political officer of the district wherein the offender's place of residence is situated; and such officer shall publish the sentence and orders at the said place in such manner as may there be usual. Act V. of 1869.

Sentences of Summary Courts-martial.

Article 159.—Any sentence awarded by a Summary Court-martial may be carried into effect forthwith on the commanding officer's own authority, and all provisions contained in Articles 151, 152, 153, 154, 155, 156, 157, 158, 160, and 161, as to execution of sentences and disposal of prisoners, shall equally apply to persons sentenced by Summary Court-martial.

CHAPTER VI.—Pardons and Remissions.

Pardon of person convicted of military offence.

Article 160.—The Governer-General of India in Council, as regards any person subject to these Articles who has been convicted by a Court-martial of a military offence, and the Governors of Fort St. George in Council, and of Bombay in Council, and the Commander-in-Chief of any presidency, as regards any such person within the territories subject to such Government, or under the command of such Commander-in-Chief, shall have power to pardon such person, and may, instead of granting a full pardon to any such person, remit wholly or in part any punishment awarded to him by a Court-martial,

and may order the restoration to such person of any service or other advantage forfeited under his sentence.

Release of prisoners.

Article 161.—Any officer in charge of a jail, on receiving a notification under the hand of a Secretary to the Government of India, or to the Government of Fort St. George, or to the Government of Bombay, or under the hand of the Commander-in-Chief of any presidency, or of the officer commanding any force not attached to a presidency, or any division or district, that the sentence under which any person subject to these Articles is imprisoned in such jail, has been annulled or remitted, or that any such person has been pardoned under Article 160, shall, on the authority of such notification alone, immediately release the prisoner or return him to military custody.

CHAPTER VII.—Regimental Courts of Enquiry.

Article 162.—If any person subject to these Articles is, without due authority, absent from his duty for two months, a Regimental Court of enquiry, composed of European or Native commissioned officers, or of both in conjunction, shall forthwith assemble, and, having received proof on oath or affirmation of the unauthorized absence, shall declare the same, and the period thereof; and the officer commanding the regiment or corps shall record such declaration in the regimental books.

If the person absent does not afterwards surrender or is not apprehended, such record shall have the legal effect of a conviction of desertion.

If he surrenders or is apprehended, such record, or a copy thereof, purporting to bear the signature of the officer having the custody of the regimental books, shall, on the trial of such person for desertion, be presumptive evidence

Act V. of 1869.

of the facts therein recorded ; and, on proof of the identity of the prisoner with the person therein mentioned, he may be found guilty of desertion.

Persons absent as Prisoners of War.

Article 163.—No person subject to these Articles shall be entitled to any pay or allowances or other public money, or to reckon service during any absence as a prisoner of war.

But when such person rejoins the service, enquiry shall be made by a Court-martial into the circumstances of his absence ; and unless it is proved to the satisfaction of such Court that he was taken prisoner through his own wilful neglect of duty, or that he had served with or under, or aided, the enemy, or that he had not, as soon as possible, returned to the service, he may be recommended by the Court to receive either the whole or any portion of the arrears due to him, and to reckon his service.

Such recommendation duly confirmed by the Commander-in-Chief of the presidency, or by the officer commanding any force not attached to a presidency to which the said person belongs, shall entitle him to receive such arrears and reckon service accordingly.

TITLE IV.—Powers of Officers independently of Trial.

Reduction to ranks.

Article 164.—The Commander-in-Chief of a presidency, and the officer commanding any force not attached to a presidency, shall have, respectively, power to reduce to the ranks non-commissioned officers under their respective command.

Minor Punishments.

Article 165.—The Commander-in-Chief in India shall, under the authority of the Governor-General in Council, prescribe the minor punishments to which persons subject to these Articles shall, for light offences, be liable, without the intervention of a Court-martial, and shall specify the officer or officers by whom, and the extent to which, such minor punishments may be awarded.

No such minor punishment shall be awarded by a Court-martial ; and, unless otherwise specially provided by the said Commander-in-Chief, no commissioned officer, sub-assistant surgeon, hospital-assistant, native doctor, or warrant-officer, shall be liable to any such minor punishment.

Good-conduct pay shall not necessarily be forfeited on the infliction of a minor punishment, but forfeiture thereof may be awarded as a substantive punishment, either by order of the commanding officer or by sentence of a Court-martial, as may from time to time be prescribed in the General Orders of the Commander-in-Chief in India or of the Commander-in-Chief of the presidency, as the case may be.

Whenever a soldier is convicted by a Court-martial, his good-conduct pay shall cease.

Forfeiture of good-conduct pay may be awarded in addition to any other minor punishment.

Offences of Native Followers.

Article 166.—For any offence in breach of good order, the commanding officer of any regiment, corps, or detachment, whether European or Native, in

camp, or at any frontier-post at which troops are stationed, and to which this Article may be specially extended by the Governor-General of India in Council, the Governor of Fort St. George in Council, the Governor of Bombay in Council, or any other Local Government, may sentence any Native follower of such regiment, corps, or detachment, if above the degree of a menial servant, to pay a fine not exceeding fifty rupees, or, in default of payment, or in lieu thereof, to imprisonment for any period not exceeding thirty days; or if the Native follower be not above the degree of a menial servant, to imprisonment not exceeding seven days, or to a corporal punishment not exceeding twelve strokes of a rattan. Act V. of 1869.

Imprisonment awarded under this Article may be carried out in a military guard, or in a jail, as ordered by the said commanding officer; and the officer in charge of any jail shall, on the delivery to him of the person of the offender, with a warrant under the hand of the said commanding officer, detain the offender according to the exigency of the warrant, or until he is discharged by due course of law.

Complaints against Officers.

Article 167.—Any person subject to these Articles, who deems himself wronged by any superior or other officer, may, if not attached to a troop or company, complain to the officer under whose command or orders he is serving; and may, if attached to a troop or company, complain to the officer commanding the same.

When the officer complained against is the officer to whom any other complaint should, under this Article, be preferred, the aggrieved person shall complain to such officer's next superior officer.

No such complaint shall be made to any officer other than those indicated in the former part of this Article.

Every officer receiving any such complaint shall examine into it, and, when necessary, refer it to superior authority.

Every such complaint shall be preferred through such channels as may be from time to time prescribed by proper authority; and any person preferring a frivolous or groundless complaint shall be liable to trial by any Court-martial competent to try him, and to such punishment, other than dismissal, corporal punishment, or imprisonment with hard labour, as the Court is empowered by these Articles to award.

Provost-marshals.

Article 168.—For the prompt and instant repression of irregularities and offences committed in the field or on the line of march, provost-marshals shall be appointed by the Commander-in-Chief of the presidency, or the officer commanding the forces in the field; and the powers and duties of such provost-marshals shall be regulated according to the established custom of war and the rules of the service.

Their duties and powers.

Article 169.—The duties of a provost-marshal so appointed are to take charge of prisoners confined for offences of a general description, to preserve good order and discipline, and to prevent breaches of the same by persons belonging or attached to the army.

The provost-marshal may punish, corporally, then and there, any person amenable to these Articles below the rank of warrant-officer, who, in his view, or in the view of any of his assistants, commits any breach of good order and military discipline:

Act V. of 1869.

Provided that such punishment shall be limited to the necessity of th case, and shall accord with the orders which the provost-marshal may fror time to time receive from the officer commanding the troops :

Provided, also, that the orders of the said commanding officer shall i no case authorize such corporal punishment in excess of that awardable by sentence of a Court-martial.

If the actual commission of the offence is not witnessed by the provost-marshal, or any of his assistants, but sufficient proof can be obtained of the offenders's guilt, he shall report the case to the commander of the troops, who shall deal with the case as he may deem most conducive to the maintenance of good order and military discipline.

TITLE V.—NON-MILITARY OFFENCES.

Offences committed within jurisdiction of Criminal Court.

Article 170.—Any person subject to these Articles, who, at any place in British India within the jurisdiction of any Court of criminal justice established by Her Majesty, or by the Government of India, or by the Local Government, is accused of any offence against the Indian Penal Code, and net included in the foregoing Articles, shall be delivered over to the nearest Magistrate to be proceeded against according to law.

All persons in, or attached to, the army are hereby required, upon application duly made to them for that purpose, to assist the officers of justice in apprehending and securing any such accused person.

Any person in, or attached to, the army, wilfully neglecting or refusing so to assist, shall be punished with any punishment, other than death or transportation, awardable under these Articles.

Offences "of which any person is accused" out of British India.*

Article 171.—In any place out of British India, offences against the Indian Penal Code, and not included in the foregoing Articles, shall, when committed by any person amenable to these Articles, be cognizable by a General Court-martial to be convened by any officer who is empowered, by warrant or Order in Council, or by Article 77, to appoint General Courts-martial.

General Court-martial for trial of such offences.

Article 172.—The provisions of these Articles as to the composition and procedure of General Courts-martial shall, with the exception of those contained in Article 117, apply to General Courts-martial for the trial of non-military offences :

Provided that such General Courts-martial shall, in every case, be attended by a Judge Advocate.

Sentences of such Court.

Article 173.—A General Court-martial held for the trial of a non-military offence shall, on the conviction of any offender, award punishment in accordance with the provisions of the Indian Penal Code.

* The words quoted have been substituted for the word "committed" by Act XII. of 1891, Sch. II.

Confirmation of Sentences.

Act V. of 1869.

Article 174.—No decision or sentence passed by any such General Court-martial shall be carried into effect until confirmed or otherwise disposed of by the authority which, under these Articles, is empowered to confirm or otherwise dispose of the sentence of such General Court-martial; and no sentence of death shall be carried into effect until confirmed by the Commander-in-Chief of the presidency to which the offender belongs, or, when the offender is beyond the limits of British India, until confirmed by the officer commanding Her Majesty's forces with which the offender is serving, or, when the offender does not belong to any presidency, until confirmed by the Commander-in-Chief in India.

Commutation of Sentences.

Prisoners.

Article 175.—All the provisions contained in Articles 143, 144, 148, 150, 151, 152, 153, 154, 155, 156, and 161, relating to the disposal of sentences and of sentenced prisoners, shall apply to persons sentenced by a General Court-martial for a non-military offence.

TITLE VI.—Effects of Deceased Men and of Deserters.

Article 176.—When any person subject to these Articles dies or is killed in the field, the officer commanding the regiment, corps, or detachment, or the officer in charge of the department to which such person belonged, shall, if no representative in interest of such person be on the spot, secure his effects in camp or quarters, and cause an inventory thereof to be made, and a duplicate of such inventory to be lodged with the officer commanding, or in charge of, the regiment, corps, detachment, or department to which the deceased belonged.

Sale of Effects and discharge of Debts.

Article 177.—If there be no representative on the spot, or readily accessible, such officer shall, without any representation taken out, publicly sell such part of the effects of the deceased in camp or quarters as do not consist of money, and shall pay thereout the debts of the deceased in camp or quarters, the expense of his funeral ceremonies, and his regimental debts of every description; and shall pay the surplus (if any) to the representative in interest of the deceased.

Remittal of Surplus.

Article 178.—In the event of no claim for the surplus of the deceased person's estate being made and established within twelve months of his death, the amount in the hands of the officer in charge of the estate shall be remitted to the Controller-General of Accounts at Calcutta, or to the Accountant-General to the Government of Fort St. George or of Bombay; or, if the deceased shall have belonged to a force not under any presidency, to the Controller-General of Accounts at Calcutta.

Sale of Effects of Deserter.

Article 179.—The effects in camp or quarters of a deserter shall be publicly sold, and the proceeds, after payment thereout of all regimental or departmental claims, shall be remitted by the officer commanding, or in charge of, the regiment, corps, detachment, or department to which the deserter be-

Act V. of 1869. longs, to the Controller-General of Accounts at Calcutta, or to the Accountant-General to the Government of Fort St. George or of Bombay.

Remittal of Proceeds.

If the deserter belongs to a force not attached to any presidency, then the said proceeds shall be remitted to the Controller-General of Accounts at Calcutta.

PART III.—MISCELLANEOUS.

Prohibition of Second Trial.

(*a.*)—Persons subject to the Articles contained in Part II. of this Act, who have been acquitted or convicted, either by a Court-martial or by a Court of criminal justice, of any offence, whether military or non-military, shall not be again tried or punished for the same offence by any Court whatsoever.

But any such person may be dismissed the service.

Prohibition of Arrest for Debt.

(*b.*)—No person attested under this Act or any previous Articles of War for Her Majesty's Indian Army shall, so long as he belongs to such army, be liable to be arrested for debt under any process issued by, or by the authority of, any Court of law.

The Judge of any such Court may examine into any complaint made by such person or his superior officer, of the arrest of such person contrary to the intent of this Act, and may by warrant under his hand discharge such person, and shall award reasonable costs to the complainant, who may recover such costs in like manner as he might have recovered costs awarded to him by a decree against the person obtaining such process.

The arms, horse, clothes, equipments, regimental accoutrements, and necessaries of any such attested person shall not be seized, nor shall his pay and allowances or any part thereof be attached, in satisfaction of any judgment against him or any person whom he may represent.

Breach of Cantonment Rules.

(*c.*)—[*Repealed by the Cantonments Act (XIII. of 1889).*]

Capture of Deserters.

(*d.*)—Whenever any person subject to the said Articles deserts, the commanding officer of the regiment, corps, or detachment to which he belongs, shall give written information of the desertion to such civil, political, or police authorities as, in his opinion, may be able to afford assistance towards the capture of the deserter; and such authorities shall thereupon take steps for the apprehension of the said deserter, in like manner as if he were a person for whose capture a warrant had been issued by a Magistrate, and shall deliver the deserter when apprehended to military custody.

Such authorities shall also, by such means as appear to them best adapted for the purpose, prevent persons reasonably suspected to be subject to the said Articles from travelling through the districts subject to their jurisdiction, unless on duty, or furnished with a certificate of leave or discharge.

Any police-officer may arrest, without warrant, any person so suspected, and shall bring him without delay before the nearest Magistrate, or the nearest military commanding officer when no Magistrate is readily accessible, to be dealt with according to law. Act V. of 1869.

Apprehension of Military Offenders.

(*e.*)—Whenever any person subject to the said Articles, who is accused of any military offence, is within the jurisdiction of any civil, political, or police-officer, such officer shall aid in the apprehension and delivery to military custody of such person upon receipt of a written application to that effect, signed by his commanding officer.

Presumption as to Signatures.

(*f.*)—In any proceeding under this Act, any application, certificate, warrant, reply, or other document purporting to be signed by an officer in the civil or military service of Government, shall, on production, be presumed to have been duly signed by the person and in the character by whom and in which it purports to have been signed, until the contrary is shown.

Native Troops serving out of their own Presidency.

(*g.*)—When any portion of the Native troops belonging to any presidency is serving within the limits of any other presidency, such troops shall, during such service, for all the purposes of the said Articles, be under the authority and orders of the Commander-in-Chief of the presidency in which they are serving:

Provided that it shall be lawful for the Governor-General of India in Council to direct that, for the purposes of the said Articles, Native troops serving out of their own presidency shall continue subject to the authority and orders of the Commander-in-Chief of the presidency to which such troops belong.

Power to make Orders and issue Warrants.

(*h.*)—The Governor-General of India in Council,

The Governors of Fort St. George and Bombay in Council,

The Commander-in-Chief of any presidency,

may respectively make all orders and issue all warrants for holding Courts-martial or otherwise, which appear necessary for the purposes of this Act; and in the case of military offences requiring to be disposed of without delay, the Governor-General of India in Council, and the Governors of Fort St. George and Bombay in Council, may respectively further authorize any officer, empowered by order in Council to confirm, commute, remit, or annul sentences in such cases, to refer such sentences for orders to the Commander-in-Chief of the presidency.

Limitation of Powers.

(*i.*)—Nothing hereinbefore contained shall empower the Commander-in-Chief of a presidency to re-admit to service or pension any person not within his command, or to authorize any officer to appoint, or to confirm, commute, remit, or annul the sentences of Courts-martial for the trial of any person not within the command of such Commander-in-Chief, except in the case specified in the proviso in clause (*g*) of this Part,

Act V. of 1869. or shall empower any Government to give directions as to the composition of, or to authorize the appointment of, Courts-martial in any place for the time being subject to any other Government.

Nothing in this Act shall be deemed to affect the authority conferred on the Commander-in-Chief in India by any Act of Parliament or by Royal Warrant or commission.

Power to make Rules.

(*j.*)—It shall be lawful for the Governor-General of India in Council from time to time to make rules consistent with this Act, for the guidance of officers, whether military, civil, or political, in all matters connected with its enforcement.

All such rules shall be published in the *Gazette of India*, and shall thereupon be deemed to have the force of law.

The Commander-in-Chief in India, as regards the presidency of Fort William and forces not attached to any presidency, may, with the previous sanction of the Governor-General of India in Council, and the Commanders-in-Chief of the presidencies of Fort Saint George and Bombay, as regards their respective presidencies, may, with the previous sanction of the Local Government, from time to time substitute for the forms of affirmation given in Articles 109 and 111, as appropriate to Native officers and witnesses, such other forms as may be thought appropriate to Native officers and witnesses of any religion.

Articles to be read Periodically.

(*k.*)—The following Articles, namely, Articles 3, 4, 5, 7 to 71, both inclusive, 90, 91, 92, 93, 94, 125, 126, 130, 131, 132, 133, 135, 136, 137, 138, 139, 154, 167, and 176, shall be read once in every three months at the head of every regiment, corps, troop, or company in the service.

APPENDIX.

PART I.—DEFINITION IN THE INDIAN PENAL CODE.

[SEE PART I., CLAUSE (*e*).]

Wrongful Gain.

23. "Wrongful gain" is gain, by unlawful means, of property to which the person gaining is not legally entitled.

Wrongful Loss.

"Wrongful loss" is the loss, by unlawful means, of property to which the person losing it is legally entitled.

A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

Dishonestly.

24. Whoever does anything with the intention of causing wrongful gain to one person, or wrongful loss to another person, is said to do that thing "dishonestly."

Fraudulently.

25. A person is said to do a thing fraudulently if he does that thing with intent to defraud, but not otherwise.

Reason to believe.

26. A person is said to have "reason to believe" a thing if he has sufficient cause to believe that thing, but not otherwise.

OF HURT.

Hurt.

319. Whoever causes bodily pain, disease, or infirmity to any person, is said to cause hurt.

Grievous Hurt.

320. The following kinds of hurt only are designated as "grievous":—

First.—Emasculation.

Secondly.—Permanent privation of the sight of either eye.

Thirdly.—Permanent privation of the hearing of either ear.

Fourthly.—Privation of any member or joint.

Fifthly.—Destruction or permanent impairing of the powers of any member or joint.

Sixthly.—Permanent disfiguration of the head or face.

Seventhly.—Fracture or dislocation of a bone or tooth.

Eighthly.—Any hurt which endangers life, or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.

Voluntarily causing Hurt.

321. Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt."

Voluntarily causing Grievous Hurt.

322. Whoever voluntarily causes hurt, if the hurt which he intends to cause, or knows himself to be likely to cause, is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt."

Explanation.—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt if, intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Act V. of 1869.

Illustration.

A, intending, or knowing himself to be likely, permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days ; A has voluntarily caused grievous hurt.

Of Criminal Force and Assault.

Force.

349. A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion, as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling : Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described :—

First.—By his own bodily power.

Secondly.—By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

Thirdly.—By inducing any animal to move, to change its motion, or to cease to move.

Criminal Force.

350. Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause, injury, fear, or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Illustrations.

(*a.*) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other act on any person's part. A has therefore intentionally used force to Z ; and if he has done so without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear, or annoyance to Z, A has used criminal force to Z.

(*b.*) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z ; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy Z, A has committed criminal force to Z.

(*c.*) Z is riding in a palanquin. A, intending to rob Z, seizes the pole and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z ; and as A has acted thus intentionally without Z's consent, in order to the commission of an offence, A has used criminal force to Z.

(*d.*) A intentionally pushes against Z in the street. Here A has, by his own bodily power, moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z, and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy Z, he has used criminal force to Z.

(*e*.) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water and dash up the water against Z's clothes, or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z or Z's clothes, A has used force to Z ; and if he did so without Z's consent, intending thereby to injure, frighten, or annoy Z, he has used criminal force to Z.

(*f*.) A intentionally pulls up a woman's veil. Here A intentionally uses force to her; and if he does so without her consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy her, he has used criminal force to her.

(*g*.) Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally, by his own bodily power, causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling : A has therefore intentionally used force to Z ; and if he has done this without Z's consent, intending or knowing it to be likely that he may thereby cause injury, fear, or annoyance to Z, A has used criminal force.

(*h*.) A incites a dog to spring upon Z, without Z's consent. Here, if A intends to cause injury, fear, or annoyance to Z, he uses criminal force to Z.

Assault.

351. Whoever makes any gesture or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

Illustrations.

(*a*.) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

(*b*.) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(*c*.) A takes up a stick, saying to Z, "I will give you a beating." Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

Theft.

378. Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Explanation 1.—A thing so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.—A moving, effected by the same act which effects the severance, may be a theft.

Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving, or by separating it from any other thing, as well as by actually moving it.

Explanation 4.—A person, who by any means causes an animal to move is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Act V. of 1869.

Explanation 5.—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority, either express or implied.

Illustrations.

(*a.*) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession, without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

(*b.*) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(*c.*) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(*d.*) A, being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(*e.*) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(*f.*) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(*g.*) A finds a ring lying on the high-road, not in the possession of any person. A by taking it, commits no theft, though he may commit criminal misappropriation of property.

(*h.*) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place, and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(*i.*) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

(*j.*) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession, with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(*k.*) Again, if A, having pawned his watch to Z, takes it out of Z's possession, without Z's consent, not having paid what he had borrowed on the watch, he commits theft, though the watch is his own property, inasmuch as he takes it dishonestly.

(*l.*) A takes an article belonging to Z out of Z's possession, without Z's consent, with the intention of keeping it until he obtains money from Z, as a reward for its restoration. Here A takes dishonestly; A has therefore committed theft.

(*m.*) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(*n.*) A asks charity from Z's wife. She gives A money, food, and clothes, which A knows to belong to Z, her husband. Here, it is probable that A may conceive that Z's wife is authorized to give away alms. If this was A's impression, A has not committed theft.

(*o.*) A is the paramour of Z's wife. She gives A valuable property, which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.

(*p*.) A, in good faith believing property belonging to Z to be A's own property, takes that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft.

OF EXTORTION.

Extortion.

383. Whoever intentionally puts any person in fear of any injury to that person or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion."

Illustrations.

(*a*.) A threatens to publish a defamatory libel concerning Z, unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(*b*.) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain moneys to A. Z signs and delivers the note. A has committed extortion.

(*c*.) A threatens to send club-men to plough up Z's field, unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has commited extortion.

(*d*.) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper, and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, A has committed extortion.

II.—INDIAN PENAL CODE, CHAPTER V.

OF ABETMENT.

Sections 107 and 108.

(See Article 71.)

Abetment of a thing.

107. A person abets the doing of a thing who—

First,—Instigates any person to do that thing; or,

Secondly,—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or,

Thirdly,—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration.

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact, and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Act V. of 1869.

Explanation 2.—Whoever, either prior to, or at the time of, the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Abettor.

108. A person abets an offence who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1.—The abetment of the illegal omission of an act may amount to an offence, although the abettor may not himself be bound to do that act.

Explanation 2.—To constitute the offence of abetment, it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations.

(*a.*) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(*b.*) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3.—It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations.

(*a.*) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence if committed by a person capable by law of committing an offence and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(*b.*) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act, and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

(*c.*) A instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling house, and is liable to the punishment provided for that offence.

(*d.*) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4.—The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration.

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and as A instigated B to commit the offence, A is liable to the same punishment.

Explanation 5.—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed. Act XIII. of 1869.

Illustration.

A concerts with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C, mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the mannner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section, and is liable to the punishment for murder.

ACT XIII. OF 1869.

RECEIVED THE G.-G.'S ASSENT ON THE 19TH MARCH 1869.

An Act further to amend the Procedure of the High Court of Judicature for the North-Western Provinces.

Preamble.

WHEREAS it is expedient to amend the Procedure of the High Court of Judicature for the North-Western Provinces of the Presidency of Fort William; It is hereby enacted as follows :—

1, 2. [*Repealed by Act X. of 1875.*]

Power to award costs on petitions, &c.

3.* Whenever any petition, application, or motion is made in any matter coming before the said Court in the exercise of its civil, criminal, or other jurisdiction, the Court shall have power to award and apportion costs in any manner it may think fit.

Penalty for making false statements in support of petitions, &c.

4.* Whenever the Court shall require the statements in support of any such petition, application, or motion to be verified by a declaration in writing, the person making such verification shall, if any such statement is false, and if he either knows or believes it to be false, or does not believe it to be true, be deemed to have intentionally given false evidence in a stage of a judicial proceeding.

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* So much of ss. 3 and 4 as relates to criminal jurisdiction was repealed by Act X. of 1875.

Act XIV. of 1869.

ACT XIV. OF 1869.

RECEIVED THE G.-G.'S ASSENT ON THE 19TH MARCH 1869.

An Act to consolidate and amend the law relating to the District and Subordinate Civil Courts in the Presidency of Bombay.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to the district and other subordinate Civil Courts in the Presidency of Bombay; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

Short title. Extent.

1. This Act may be called "The Bombay Civil Courts' Act, 1869;" and extends only to the territories (other than Sindh) under the government of the Governor of Bombay in Council in which the Code of Civil Procedure is now in force.

But the Governor of Bombay in Council may, by notification in the Government Gazette, extend this Act to any other of the territories under such Government in which the said Code is not in force, or to Sindh.

2. [*Repealed by Act XIV. of 1870.*]

PART II.

DISTRICT AND SADR STATIONS.

Alteration and creation of districts.

3. The Governor of Bombay in Council may, from time to time, by notification in the Government Gazette, alter the limits of existing zilas (which shall hereafter be called districts), and create new districts for the purposes of this Act.

Position of sadr station.

4. The Governor of Bombay in Council may also, from time to time, by notification in the Government Gazette, alter the position of the sadr station in any district, and fix the position of the sadr station in any new district.

PART III.

DISTRICT COURTS.

District Judges.

5. There shall be in each district a District Court presided over by a Judge to be called the District Judge. He shall be appointed by the Governor of Bombay in Council by whose authority only he shall be liable to be suspended or removed from his appointment.

Situation of District Court.

6. The District Judge shall ordinarily hold the District Court at the sadr station in his district, but may, with the previous sanction of the High Court, hold it elsewhere within the district.

Act XIV. of 1869.

Original jurisdiction of District Court.

7. The District Court shall be the principal Court of original civil jurisdiction in the district, within the meaning of the Code of Civil Procedure.

His appellate jurisdiction.

8. Except as provided in sections 16, 17, and 26, the District Court shall be the Court of Appeal from all decrees and orders passed by the subordinate Courts from which an appeal lies under any law for the time being in force.

Control and inspection of Courts.

9. The District Judge shall have general control over all the Civil Courts and their establishments within the district, and it shall be his duty to inspect, or to cause one of his assistants to inspect, the proceedings of all the Courts subordinate to him, and to give such directions with respect to matters not provided for by law as he may think necessary.

The District Judge shall also refer to the High Court all such matters as appear to him to require that a rule of that Court should be made thereon.

Writs and orders.

10. The District Judge shall obey all writs, orders, or processes, issued to him by the High Court, and shall make such returns or reports thereto under his signature and the seal of the Court as the exigencies of the case require.

Reports and returns.

He shall further furnish such reports and returns and copies of proceedings as may be called for by the High Court or the Governor of Bombay in Council.

Seal of District Judge.

11. The District Judge shall use a circular seal, two inches in diameter, which shall bear thereon the Royal Arms with the following inscription in English and the principal language of the district—"District Court of ."

PART IV.—*Joint Judges.*

Power to appoint Joint Judges.

12. The Governor of Bombay in Council may, with the previous sanction of the Governor-General of India in Council, appoint in any district a Joint Judge, who shall be invested with co-extensive powers and a concurrent jurisdiction with the District Judge, except that he shall not keep a file of civil suits, and shall transact such civil business only as he may receive from the District Judge, or as may have been referred to the Joint Judge by order of the High Court.

When the appointment of a Joint Judge shall have been sanctioned by the Governor-General of India in Council, the Governor of Bombay in Council may, so long as such sanction continues in force, appoint a successor to such Joint Judge in case his office becomes vacant, or transfer such Joint Judge from one district to another; and in such other district the Joint Judge so transferred shall have the same powers as he had in the former district.

Enactments applied to Joint Judge.

Joint Judge's seal.

13. All Regulations and Acts now or hereafter in force, and applying to a District Judge, shall be deemed to apply also to the Joint Judge; and the seal of the Joint Judge shall be the same as is used by the District Judge.

Act XIV. of 1869.

PART V.—*Assistant Judges.*

Power to appoint Assistant Judges.

14. The Governor of Bombay in Council, under the general control of the Governor-General of India in Council, may appoint one or more assistants to the District Judge, and may suspend or remove from his appointment any assistant so appointed.

Situation of Assistant Judge's Court.

15. An Assistant Judge shall ordinarily hold his Court at the same place as the District Judge, but he may hold his Court elsewhere within the district, whenever the District Judge shall, with the previous sanction of the High Court, direct him so to do.

Original jurisdiction of Assistant Judge.

16. The District Judge may refer to any Assistant Judge subordinate to him original suits of which the subject-matter does not amount to 10,000 rupees in amount or value, and miscellaneous applications not being of the nature of appeals.

The Assistant Judge shall have jurisdiction to try such suits and to dispose of such applications.

Where the Assistant Judge's decrees and orders in such cases are appealable, the appeal shall lie to the District Judge or to the High Court according as the amount or value of the subject-matter does not exceed or exceeds 5,000 rupees.*

The Assistant Judge shall, when directed by the District Judge so to do, also take evidence on applications for certificates under* Act No. XX. of 1864 (*for making better provision for the care of the persons and property of minors in the Presidency of Bombay*), and shall forward it with his opinion thereon for the final orders of the District Judge.

Appellate jurisdiction of Assistant Judge.

17. The Governor of Bombay in Council may, by notification in the Government Gazette, empower any Assistant Judge to try such appeals from the decrees and orders of the subordinate Courts as would lie to the District Judge, and as may be referred by him to the Assistant Judge.

Decrees and orders passed under this section by an Assistant Judge shall have the same force, and shall be subject to the same rules, as regards procedure and appeals, as decrees and orders passed by the District Judge.

Continuance of Assistant Judge's appellate jurisdiction.

18. A person filling the office of Assistant Judge, on whom the power of hearing appeals has once been conferred under section 17, shall continue to have this power so long and so often as he may fill the office of Assistant Judge, without reference to the district in which he may be employed: provided that the Governor of Bombay in Council may, by notification in the Government Gazette, at any time withdraw such power.

Power to invest Assistant Judge with powers of District Judge.

19. The Governor of Bombay in Council may, by notification in the Government Gazette, invest an Assistant Judge with all or any of the powers of a District Judge within a particular part of a district, and may, by like notification, from time to time determine and alter the limits of such part.

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* In s. 16, the last paragraph, as originally enacted, has been omitted, a portion of it having been repealed by Act VII. of 1889, and the remaining portion by Act VIII. of 1890.

The jurisdiction of an Assistant Judge so invested shall, *pro tanto*, exclude the jurisdiction of the District Judge from within the said limits. Act XIV. of 1869.

Every Assistant Judge so invested shall ordinarily hold his Court at such place within the local limits of his jurisdiction as may be determined by the Governor of Bombay in Council, and may, with the previous sanction of the High Court, hold it at any other place within such limits.

Assistant Judge to use seal of District Judge.

20. Every Assistant Judge shall use the seal of the District Judge to whom he is assistant.

PART VI.—*Subordinate Judges.*

Number of Subordinate Civil Courts.

21. There shall be in each district so many Civil Courts subordinate to the District Court as the Governor of Bombay in Council, acting under the general control of the Governor-General of India in Council, shall from time to time direct.

Appointment of Subordinate Judges.

22. The Judges of such subordinate Courts shall be appointed by the Governor of Bombay in Council, and shall be called Subordinate Judges.

No person shall be appointed a Subordinate Judge unless he be a subject of the Queen who has practised five years as an advocate of a High Court in India or as a vakil in the High Court of Judicature in Bombay, or who has qualified for the duties of a Subordinate Judge according to such tests as may for the time being be prescribed by such High Court, or who has taken the degree of Bachelor of Laws in the University of Bombay.

The tests so prescribed by the High Court shall be notified in the Government Gazette.

Power to fix local limits of jurisdiction of Subordinate Judges.

22A. The Governor-General in Council may, by notification in the official Gazette, fix, and, by a like notification, from time to time, alter the local limits of the ordinary jurisdiction of the Subordinate Judges.*

Situation of Subordinate Courts.

23. The Subordinate Judges shall hold their Courts at such place or places as the Governor of Bombay in Council may from time to time appoint within the local limits of their respective jurisdictions.

Wherever more than one such place is appointed, the District Judge shall, subject to the control of the High Court, fix the days on which the Subordinate Judge shall hold his Court at each of such places, and the Subordinate Judge shall cause such days to be duly notified throughout the local limits of his jurisdiction.

The same person may be the Judge of more than one subordinate Court; and in such cases the District Judge shall, subject to the control of the High Court, prescribe rules for regulating the time during which the Subordinate Judge shall sit in each Court.

The Judge of any subordinate Court may, with the previous sanction of the High Court, be deputed by the District Judge to the Court of another Subordinate Judge for the purpose of assisting him in the disposal of the suits on his file.

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* S. 22A has been added by Act IX. of 1880.

Act XIV. of 1869.

Classes of Subordinate Judges.

24. The Subordinate Judges shall be of two classes.

Jurisdiction of Subordinate Judge of first class.

The jurisdiction of a Subordinate Judge of the first class extends to all original suits and proceedings of a civil nature.

Jurisdiction of Subordinate Judge of second class.

The jurisdiction of a Subordinate Judge of the second class extends to all original suits and proceedings of a civil nature wherein the subject-matter does not exceed in amount or value five thousand rupees.

Special jurisdiction of Subordinate Judge of first class.

25. A Subordinate Judge of the first class, in addition to his ordinary jurisdiction, shall exercise a special jurisdiction in respect of such suits and proceedings of a civil nature wherein the subject-matter exceeds five thousand rupees in amount or value as may arise within the local jurisdictions of the Courts in the district presided over by Subordinate Judges of the second class.

In districts to which more than one Subordinate Judge of the first class have been appointed, the District Judge, subject to the orders of the High Court, shall assign to each the local limits within which his said special jurisdiction is to be exercised.

Appeals from his decision.

26. In all suits decided by a Subordinate Judge of the first class in the exercise of his ordinary and special original jurisdiction, of which the amount or value of the subject-matter exceeds 5,000 rupees, the appeal from his decision shall be direct to the High Court.

Appellate jurisdiction of Subordinate Judge of first class.

27. The Governor of Bombay in Council may invest any Subordinate Judge of the first class with power to hear appeals from such decrees and orders of subordinate Courts as may be referred to him by the Judge of the district.

Decrees and orders so passed in appeal by a Subordinate Judge of the first class shall have the same force as if passed by a District Judge.

The Governor of Bombay in Council may, whenever he thinks fit, withdraw such jurisdiction from any Subordinate Judge so invested.

Power to invest Subordinate Judges with small cause powers.

28. The Governor of Bombay in Council may invest, within such local limits as he shall from time to time appoint, any Subordinate Judge of the first class with the jurisdiction of a Judge of a Court of Small Causes, for the trial of suits cognizable by such Courts up to the amount of 500 rupees, and any Subordinate Judge of the second class with the same jurisdiction up to the amount of 50 rupees.

The Governor of Bombay in Council may, whenever he thinks fit, withdraw such jurisdiction from any Subordinate Judge so invested.

Seal of Subordinate Judge.

29. Each Subordinate Judge shall use a seal one inch and-a-half in diameter, bearing the Royal Crown with the following inscription in English and the principal language of the District—"Subordinate Judge of ."

30, 31. [*Repealed by Act XII. of 1876.*]

Act XIV. of 1869.

32. No Subordinate Judge or Court of Small Causes shall receive or register a suit in which the Government or any officer of Government in his official capacity is a party, but in every such case such Judge or Court shall refer the plaintiff to the District Judge, in whose Court alone (subject to the provisions of section 19) such suit shall be instituted : *

Reference of Government suits.

Proviso.

† "Provided that nothing in this section shall be deemed to apply to any suit, merely because—

"(*a*) a municipal corporation constituted under Bombay Act No. VI. of 1873, or any other enactment for the time being in force, is a party to such suit, and an officer of Government is, in his official capacity, a member of such corporation, or

"(*b*) an officer of a Court appointed under the Code of Civil Procedure, section 456, last paragraph,‡ is, in virtue of such appointment,‡ a party to such suit."

Removal or Suspension.

33. Whenever the High Court is of opinion that there are good grounds for making a formal and public enquiry into the truth of any imputation or misconduct by any Subordinate Judge, the High Court may appoint a Commissioner or Commissioners for the purpose of holding such an enquiry, and, on the receipt of his or their report, may order that the Subordinate Judge be removed or suspended from office or reduced to a lower class.

Commission of enquiry into alleged misconduct.

The provisions of Act No. XXXVII. of 1850 (*for regulating enquiries into the behaviour of public servants*) shall apply to enquiries under this section, the powers conferred by that Act on the Government being exercised by the High Court.

34. The High Court may suspend any Subordinate Judge from office pending the result of an enquiry into his behaviour under this section.

Suspension of Subordinate Judges by High Court or by District Judge.

Any District Judge may, whenever he sees urgent necessity for so doing, suspend from office any Subordinate Judge under his control. But whenever the District Judge suspends any such Subordinate Judge, he shall forthwith report the case for the orders of the High Court.

Nothing in this section or in section 33 shall be held to interfere with the right of Government to suspend, or remove from office, any Subordinate Judge at their discretion.

Saving of power of Government to suspend or dismiss.

PART VII.—*Temporary vacancies.*

35. In the event of the death of the District Judge, or of his being prevented from performing his duties by illness or other casualty, or of his absence from his district on leave, the first in rank of the Assistant Judges in the district, or, in the absence from the district of an Assistant Judge, the first in rank of the Subordinate Judges, shall assume charge of the District Court without interruption to his ordinary jurisdiction, and, while so in charge, shall perform the duties of a District Judge,

Temporary vacancy of office of District Judge.

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* The section, substituted by Act X. of 1876, s. 15, is printed here.

† This proviso has been added to this section by Act XV. of 1880, s. 3.

‡ In s. 32, proviso, cl. *b*, certain words, repealed by Act XII. of 1891, have here been omitted.

Act XIV. of 1869. with respect to the filing of suits and appeals, receiving pleadings, execution of processes, return of writs, and the like, and shall be designated Assistant Judge or Subordinate Judge, as the case may be, in charge of the district, and shall continue in such charge until the office of District Judge may be resumed or assumed by an officer duly appointed thereto.

Delegation of powers of District Judge.

36. Any District Judge leaving the sadr station, and proceeding on duty to any place within his district, may delegate to an Assistant Judge, or in the absence of an Assistant Judge, to a Subordinate Judge at the sadr station, the power of performing such of the duties enumerated in section 35 as may be emergent; and such officer shall be designated Assistant or Subordinate Judge, as the case may be, in charge of the sadr station.

Temporary vacancy of office of Subordinate Judge.

37. In the event of the death, suspension, or temporary absence of any Subordinate Judge, the District Judge may empower the Judge of any subordinate Court of the same district to perform the duties of the Judge of the vacated subordinate Court, either at the place of such Court or of his own Court; but in every such case the registers and records of the two Courts shall be kept distinct.

PART VIII.—*Ministerial officers.*

Appointment, &c., of ministerial officers.

38. All ministerial officers of the Civil Courts in each district shall be appointed, and may be fined, suspended, or dismissed, by the District Judge, subject to such rules as the High Court may from time to time prescribe:

Provided that the Judge of every subordinate Court may, subject to the like rules, appoint the ministerial officers of such Court, whose salaries do not exceed rupees ten per mensem, and may by order fine, suspend, or dismiss any ministerial officer of such Court who is guilty of any misconduct or neglect in the performance of the duties of his office.

Every such order shall be subject to appeal to the District Judge; and the rules for the time being applicable to appeals to the Court of Session from orders of the Criminal Courts subordinate thereto shall apply to all appeals under this section.

Nothing in this section shall exempt the offender from any penal or other consequences to which he may be liable under any other law in force for the time being.

Duties of ministerial officers.

39. The duties of the said ministerial officers shall be regulated by such rules as the High Court may from time to time prescribe.

Power to appoint clerks of the Courts.

40. The Governor of Bombay in Council may, under the general control of the Governor-General of India in Council, appoint to any Civil Court under this Act a Clerk of the Court who, in addition to such duties as may from time to time be prescribed by the High Court, may receive and register plaints, and shall refer such as he may consider should be refused for the orders of the Judge of the Court, and may sign all processes, and authenticate copies of papers.

PART IX.—*Miscellaneous.*

Act XIV. of 1869.

41. The proceedings of each Civil Court shall be kept and recorded according to such rules as the High Court may from time to time prescribe. The High Court shall also lay down rules under which copies of papers may be granted.

Rules for keeping proceedings.

42. The High Court shall from time to time, with the sanction of the Governor of Bombay in Council, prescribe and regulate the fees to be taken for any process issued by any Court, the constitution of which is declared by this Act, or by any officer of such Court.

Fees for process.

Tables of the fees so prescribed shall be published in the Government Gazette.

43. The District and Subordinate Courts shall sit from day to day, except on Sundays, New Year's Day, Good Friday, Christmas Day, and Her Majesty's Birthday, and such other days as may be sanctioned for each or every district by the High Court.

Sittings of Courts.

The High Court may also permit the Civil Courts under its control to adjourn for a period or periods not exceeding in the whole six weeks in each year.

Vacation.

Act XV. of 1869.

ACT XV. OF 1869.*

RECEIVED THE G.-G.'S ASSENT ON THE 4TH JUNE 1869.

An Act to provide facilities for obtaining the evidence and appearance of prisoners, and for service of process upon them.

Preamble. WHEREAS it is expedient to provide facilities for obtaining the evidence and appearance in Court of prisoners, and for service of process upon them; It is hereby enacted as follows:—

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* Act XV. of 1869 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886.

It is included in the Schedule to the Santál Parganas Laws Regulation, III. of 1886.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

The Taluqs of Bhádrachálam and Rakapilli and the Rampa Country	See *Gazette of India*	Oct. 4, 1879, Pt. I., pp. 634 and 631 respectively.
Sindh	Ditto	Dec. 4, 1880, Pt. I., p. 672.
Territory of Peint	Ditto	Mar. 12, 1887.
West Jalpáiguri, the Western Dvárs, the Western Hills of Dárjiling, the Dárjiling Tarái, and the Damson Sub-division of the Dárjiling District	Ditto	Mar. 5, 1881, Pt. I., p. 74.
The Districts of Hazáribágh, Lohárdaga, and Manbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	Ditto	Oct. 22, 1881, Pt. I., p. 504.
The Jhánsi Division	Ditto	Aug. 31, 1878, Pt. I., p. 546.
Kumáon and Garhwál	Ditto	Nov. 4, 1876, Pt. I., p. 605.
The scheduled portion of the Mirzápur District	Ditto	May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	May 31, 1879, Pt. I., p. 382.
The Districts of Hazára, Peshá-war, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán	Ditto	Jan. 30, 1886, Pt. I., p. 48.
The District of Lahaul	Ditto	May 1, 1886, Pt. I., p. 301.
The Scheduled Districts of the Central Provinces	Ditto	Dec. 13, 1879, Pt. I., p. 771.
Coorg	Ditto	Dec. 28, 1878, Pt. I., p. 747.
The Districts of Kámrup, Nau-gong, Darrang, Sibságár, La-khimpur, Goálpára (excluding the Eastern Dvárs), and Kachár (excluding the North Kachár Hills)	Ditto	Aug. 24, 1878, Pt. I., p. 533.
The District of Silhat	Ditto	Oct. 14, 1879, Pt. I., p. 631.

It has been extended, under the same Act, to the following Scheduled Districts:—

The North-Western Provinces Tarái	See *Gazette of India*	Sep. 23, 1876, Pt. I., p. 505.
Ajmere and Merwára	Ditto	June 22, 1878, Pt. I., p. 380.

The Act is not to affect the power of Presidency Magistrates to order prisoners in jail to be brought before them for examination.—See Act X. of 1882, s. 542.

PART I.

PRELIMINARY.

Short title.

1. This Act may be called "The Prisoners' Testimony Act, 1869."

Presidency Small Cause Courts.

Presidency Magistrates.

2. For the purposes of this Act, the Courts of Small Causes established* within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William, Madras, and Bombay, and the Courts of persons exercising the powers of a Presidency Magistrate† within the same limits, shall be deemed to be respectively subordinate to the said High Courts.

PART II.

BRINGING UP PRISONERS.

Criminal Courts may make orders under Act.

3. Any Criminal Court not inferior to the Court of a Subordinate Magistrate of the first class may in its discretion, if it appear that the testimony of any person confined in any jail situate within the local limits of its appellate jurisdiction, if the Criminal Court be a High Court, or, if it be not a High Court, then within the local limits of the appellate jurisdiction of the High Court to which it is subordinate, is material in any matter, depending in such Criminal Court, or if a charge of an offence against such person is made or pending, make an order in the form in Schedule A or Schedule B (as the case may be) to this Act annexed, directed to the officer in charge of the said jail.

Civil Courts may make orders under Act.

4. Any Civil Court may in its discretion, if it appear that the testimony of any person confined in any jail situate within the local limits of its appellate jurisdiction, if the Civil Court be a High Court, or, if it be not a High Court, then within the local limits of the appellate jurisdiction of the High Court to which it is subordinate, is material in any matter depending in such Civil Court, make an order in the form in the said Schedule A, directed to the officer in charge of the said jail.

Court to countersign orders.

5. When such order is made in any civil matter pending in a Court subordinate to the Court of the District Judge, or in any Court of Small Causes situate outside the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William in Bengal, Madras, and Bombay, it shall not be forwarded to the officer to whom it is directed, or acted upon by him, until the same shall have been submitted to, and countersigned by, such Judge or the District Judge within the local limits of whose jurisdiction such Court of Small Causes is situate.

Statement of facts necessitating order.

Every order so submitted shall be accompanied by a statement, under the hand of the Judge, of the facts which, in his opinion, render such order necessary, and the District Judge may, after considering such statement, decline to countersign the order.

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* See Act XV. of 1882.

† See Act X. of 1882, s. 3.

Act XV. of 1869.

Order to be transmitted through Magistrate of district in which person is confined.

6. When any person, for whose attendance an order as hereinbefore mentioned shall be made, is confined in any district other than that in which the Court making or countersigning the order is situate, the order shall be sent by the Court by which it shall have been made or countersigned to the Magistrate of the district or division of a district in which the said person is confined, and such Magistrate shall cause it to be delivered to the officer in charge of the jail in which such person is confined.

Order by High Court for removal of person confined more than 100 miles from place where his evidence is required.

7. In any case in which a person is confined in a jail within the local limits of the ordinary original civil jurisdiction of any of the High Courts of Judicature at Fort William, Madras, and Bombay, or in a jail more than one hundred miles distant from the place where any Court, subordinate to a High Court, in which his evidence is required, is held, the Judge or presiding officer of the Court in which the evidence is so required shall, if he think it expedient that such person should be removed under this Act for the purpose of giving evidence in such Court, and if the said jail is situate within the local limits of the appellate jurisdiction of the High Court to which such Court is subordinate, apply in writing to the same High Court, and such High Court may, if it think fit, make an order in the form in the said Schedule A, directed to the officer in charge of the said jail.

The High Court making the order shall send it to the Magistrate of the district or division of a district in which the person named therein is confined, and such Magistrate shall cause the order to be delivered to the officer in charge of the jail in which such person is confined.

For the purposes of this Act, every jail in Lower Burma shall be deemed to be situate within the local limits of the appellate jurisdiction of the Judicial Commissioner, and the Recorder of Rangoon may issue orders under this section or section 3 or 4, and may also issue commissions under Part III. of this Act, in any jail in Lower Burma.*

Persons confined beyond limits of appellate jurisdiction of High Court.

8. In any case in which a person is confined within a jail situate beyond the local limits of the appellate jurisdiction of a High Court, any Judge of such Court may, if he think it expedient that such person should be removed under this Act for the purpose of giving evidence in any criminal matter in such Court or in any Court subordinate thereto, apply in writing to the Local Government within the territories subject to which the said jail is situate; and such Government may, if it think fit, direct that such person shall be so removed, subject to such rules regulating the escort of such prisoners as the Governor-General of India in Council may, from time to time, prescribe.

To obtain the removal of a person confined in a jail situate beyond the limits of Lower Burma for the purpose of giving evidence in any criminal matter in any Court within the local limits of the ordinary civil jurisdiction of the Recorder of Rangoon, the Recorder shall have the power conferred on a Judge of a High Court by the former part of this section, and the other provisions of such part shall, *mutatis mutandis*, apply.*

Prisoner to be brought up.

9. Upon delivery of any order under this Act to the officer in charge of the jail in which the person named therein is confined, such officer shall cause him to be taken to the

* This paragraph has been substituted by Act XI. of 1889, s. 98.

Court in which his attendance is required, so as to be present in such Court at the time in such order mentioned: and shall cause him to be detained in custody in or near the Court until he shall have been examined, or until the Judge or presiding officer of such Court shall authorize him to be taken back to the jail in which he was confined.

Power to Government to exempt certain prisoners from operation of Act.

10. The Governor-General of India in Council or the Local Government may, from time to time, by notification in the official Gazette,* direct that any person or any class of persons shall not be removed from the jail in which he or they may be confined; and thereupon, and so long as such notification remains in force, the provisions of this Act, other than those contained in sections 12, 13, and 14, shall not apply to such person, or class of persons.

When jailor may disobey orders.

11. When any person named in any order made under section 3, section 4, or section 7, appears to be, from sickness or other infirmity, unfit to be removed, the officer in charge of the jail in which he is confined shall apply to the Magistrate of the district or division of a district in which such jail is situate; and if such Magistrate shall, by writing under his hand, declare himself to be of opinion that such person is, from infirmity, unfit to be removed;

or when any person named in any such order is under committal for trial;

or under a remand pending trial or pending a preliminary investigation;

or when any such person is in custody for a period which would expire before the expiration of the time required for removing him under this Act, and for taking him back to the jail in which he is confined;

then, and in every such case, the officer in charge of the jail shall abstain from obeying such order, and shall send to the Court from which the order has been issued a statement of his reason for not obeying the same:

Provided that the said officer shall not so abstain when the order has been made under section 3, and the person named in the order is confined under committal for trial or under a remand pending trial or pending a preliminary investigation, and does not appear to be, from sickness or other infirmity, unfit to be removed, and the place where his evidence is required is not more than five miles distant from the jail in which he is confined.

PART III.

COMMISSIONS.

Commission for examination of prisoners.

12. Whenever it shall appear to any Civil Court that the evidence of a person confined in any jail situate within the local limits of the appellate jurisdiction of such Court, if it be a High Court, or, if it be not a High Court, then within the local limits of the appellate jurisdiction of the High Court to which it is subordinate, who for any of the causes mentioned in section 10 or section 11, cannot be brought up before it, is material in any matter depending before such Court,

* See *British Burma Gazette*, June 19, 1875, Pt. II., p. 107.

Act XV. of 1869.

and whenever it shall appear to any such Court that the evidence of a person confined in any jail so situate, and more than ten miles distant from the place at which such Court is held, is material in any such matter,

and in any case in which the District Judge shall, under section 5, have declined to countersign the order for removal,

the Court may, if it think fit, issue a commission under the provisions of the Code of Civil Procedure* for the examination of such person in the jail in which he is confined.

Commission for examination of prisoners beyond limits of appellate jurisdiction of High Court.

13. Whenever it shall appear to any High Court that the evidence of a person confined in a jail situate beyond the local limits of its appellate jurisdiction is material in any civil matter depending before such Court or before any Court subordinate thereto, the High Court may, if it think fit, issue a commission under the provisions of the Code of Civil Procedure* for the examination of such person in the jail in which he is confined.

Commission how to be directed.

14. Every commission issued under section 12 or section 13 shall be directed to the District Court of the district wherein the jail in which such person is confined is situate, and such Court shall commit the execution of the commission to the officer in charge of such jail, or to such other person as the Court thinks fit.

PART IV.

SERVICE OF PROCESS ON PRISONERS.

Process how served on prisoners.

15.† When any process directed to any person confined in any jail is issued from any Court, the same may be served by exhibiting to the officer in charge of such jail or prison the original of such process, and by depositing with him a copy thereof.

Process served to be transmitted at prisoner's request.

16.† Every officer in charge of a jail, upon whom any such service as is mentioned in section 15 shall be made, shall, as soon as may be, cause the copy of the process so deposited with him to be shown and explained to the prisoner to whom it is directed, and shall thereupon endorse upon such process a certificate signed by him that the prisoner to whom the process is directed is a prisoner in the jail under his charge, and that he has received a copy thereof,

Such certificate shall be sufficient *primâ-facie* evidence of the service of such process; and, if the prisoner requests that the said copy be sent to any other person, and provides the cost of so sending it, the said officer shall cause the same to be so sent through the post-office by registered letter.

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* See Act XIV. of 1882, s. 3.

† So much of ss. 15 and 16 as relates to process issued by a Civil Court has been repealed by Act X. of 1877, s. 3.—See now Act XIV. of 1882, ss. 87 and 88.

PART V.

MISCELLANEOUS.

Deposit of costs.

17. No order in any civil matter shall be made by a Court under any of the provisions hereinbefore contained, until the amount of the costs and charges of the execution of such order (to be determined by the Court) is deposited in such Court:

Provided that, if upon any application for such order it appears to the Court to which the application is made that the applicant has not sufficient means to meet the said costs and charges, the Court may pay the same out of any fund applicable to the contingent expenses of such Court, and every sum so expended may be recovered by Government from any person ordered by the Court to pay the same, as if it were costs of suit recoverable under the Code of Civil Procedure.*

Power to make rules.

18. It shall be lawful for the Local Government, and, in cases arising under section 8, for the Governor-General of India in Council, to make rules,† consistent with this Act,

(1) for regulating the escort of prisoners to and from the Court in which their presence is required;

(2) for regulating the amount to be allowed for the costs and charges of such escort; and

(3) for the guidance of officers in all other matters connected with the enforcement of this Act;

and from time to time to alter and add to the rules so made.

Publication of rules.

19. All such rules, alterations, and additions shall be published in the official Gazette, and shall, from the date of such publication, be deemed to have the force of law.

Power to declare who shall be deemed officer in charge of jail.

20. The Local Government may also declare in each case what officer shall, for the purposes of this Act, be deemed to be "the officer in charge of the jail."

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* See Act XIV. of 1882, s. 3.

† Rules by the Governor-General in Council, under this section and s. 10, for giving effect to the Prisoners' Testimony Act, 1869, in British Burma—Home Department Notification No. 544, dated 24th March 1870, *Gazette of India*, 26th March 1870, Part I., p. 202.

Ditto in the Central Provinces—Home Department Notification No. 1306, dated 7th September 1869, *Gazette of India*, 11th September 1869, Part I., p. 261.

Ditto in the Punjáb—Home Department Notification No. 1389, dated 21st September 1869, *Gazette of India*, 25th September 1869, p. 300.

Ditto in Coorg—Home Department Notification No. 1391, dated 21st September 1869, *Gazette of India*, 25th September 1869, p. 301.

Ditto in the North-Western Provinces—Home Department Notification No. 1539, dated 13th October 1869, *Gazette of India*, 16th October 1869, p. 386.

Ditto in Oudh—Home Department Notification, No. 1725, dated 30th November 1869, *Gazette of India*, 4th December 1869. p. 490.

Ditto in the Haidarabad Assigned Districts—Home Department Notification No. 1814, dated 15th December 1869, *Gazette of India*, 18th December 1869, p. 530.

Rules made by the Lieutenant-Governor of Bengal under this section—Bengal Government Circular 6, dated 11th January 1870, *Calcutta Gazette*, 12th January 1870, p. 35.

Act XVI. of 1869.

SCHEDULE A.

Court of

To the officer in charge of the (*state name of jail*).

You are hereby required to have the body of , now a prisoner in under safe and sure conduct before the , at , on the day of next, by of the clock in the forenoon of the same day, there to give testimony in a cause now pending before [*or* in a certain charge or prosecution now pending before against , *or as the case may be*], and after the said shall then and there have given his testimony before the said , or the said shall dispense with his further attendance, cause him to be conveyed under safe and sure conduct back to the said jail.

day of

A. B.

(Countersigned) C. D.

SCHEDULE B.

Court of

To the officer in charge of the (*state name of jail*).

You are hereby required to have the body of , now a prisoner in under safe and sure conduct before the , at , on the day of next, by of the clock in the forenoon of the same day, there to answer a charge now pending before , and after such charge shall have been disposed of, or the said shall dispense with his further attendance, cause him to be conveyed under safe and sure conduct back to the said jail.

day of

A. B.

(Countersigned) C. D.

ACT XVI. OF 1869.

RECEIVED THE G.-G.'S ASSENT ON THE 23RD JULY 1869.

An Act to exclude the ordinary Civil Courts from the cognizance of suits relating to land in the Bhután Dvárs, and for other purposes.

Preamble.

WHEREAS it is expedient to exclude the ordinary Civil Courts from the cognizance of suits relating to immoveable property, revenue, and rent in the territory ceded by the Government of Bhután to the British Government in the year 1866, and commonly known as the Bhután Dvárs; and whereas certain rules relating to immoveable property, revenue, and rent in the said territory, and contained in the schedule to this Act, have been made by the Lieutenant-Governor of Bengal, and it is expedient that such rules should have the force of law; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Bhután Dvárs Act, 1869."

Abolition of Civil Courts' jurisdiction as to immoveables in Dvárs.

2. The jurisdiction which the ordinary Civil Courts of Judicature have hitherto had and exercised in respect of suits (whether instituted before or after the passing of this Act) and other matters connected with immoveable property, revenue, and rent in the said territory, shall cease.

Jurisdiction by whom exercisable.

3. Such jurisdiction shall be exercised by such officers and within such local limits as the Lieutenant-Governor of Bengal shall from time to time appoint in this behalf.

4. [*Repealed by Act XVI. of 1874.*]

Validation of rules.

5. The rules contained in the schedule to this Act shall be deemed to have the force of law.

Power to make additional rules.

6. The said Lieutenant-Governor may from time to time make additional rules consistent with this Act and the schedule hereto for the guidance of officers in matters connected with the enforcement of this Act and the rules contained in the said schedule.

Such additional rules shall be published in the *Calcutta Gazette*, and shall thereupon have the force of law.

SCHEDULE.

Rules relating to Immoveable Property, Rent, and Revenue in the Bhután Dvárs.

I. At a reasonable time before any officer appointed under section 3 of the Bhután Dvárs Act, 1869, shall commence his enquiries in any revenue-survey circuit or other convenient tract of country, a notice shall be published in such tract, calling on all interested in the suits and matters mentioned in section 2 of the said Act to come forward and advance their claims and protect their interests before the said officer.

II. In the investigation of such suits and matters, the said officer shall be guided by the provisions of Regulation VII. of 1822, and shall exercise all the powers conferred upon a Collector making a settlement of land-revenue by that Regulation and all other Regulations and Acts amending the same, in addition to the powers vested in him by these rules.

III. The said officer shall make a record in such form as the Lieutenant-Governor may direct, of all rights, interests, and other matters which he is empowered by these rules to investigate, ascertain and determine.

IV. The said officer shall ascertain the position as to rights and interests connected with the soil which each person *bonâ fide* occupied before the state of things was affected by the Bhután war, and, subject to due regard for considerations of public policy, confirm him in that position: he shall take cognizance of, and decide, all disputes, conflicting claims, and doubtful questions which then existed: Provided that he shall not take cognizance of any right or interest which, being capable of exercise or assertion within twelve years before the date on which the Bhutan Dvárs were transferred to the British Government, had not been exercised or asserted during the period.

V. As soon as the record-of-rights for any tract as mentioned in Rule III. is completed, the said officer shall cause it to be published in the tract, and a second copy shall be open for inspection at his office, of which fact due notice shall be given.

VI. Within one month of such publication, any person who is dissatisfied with any entry in the record, which has not been adjudicated upon by the said officer, may present a petition to such officer, who shall thereupon proceed to try the questions in dispute.

VII. Any person aggrieved by any decision or order of the said officer may appeal by petition to the Commissioner of the division, or to any other officer specially appointed by the Lieutenant-Governor to be a Commissioner in that behalf: Provided that such appeal be presented within three months of the date of the decision or order appealed against, unless sufficient cause for longer delay be shewn to the satisfaction of the Commissioner.

VIII. The said officer may, within one month of the passing of any decision or order by him, admit to review any such decision or order, and eventually amend, vary, or correct the same: Provided that no appeal shall have been preferred against such order or decision to the appellate authority as defined in Rule VII.

IX. The appellate authority may, within one month of the passing of any decision or order by such appellate authority on appeal, admit to review any such decision or order.

Act XX. of 1869.

X. No appeal shall lie as of right to any authority against any order passed by the appellate authority under these rules, but, notwithstanding anything to the contrary in these rules, the Lieutenant-Governor of Bengal may, if he think fit, alter, vary, or annul any decision or order which may have been passed under these rules: Provided that an application in that behalf shall have been made before or within one month after the issue of the notification of confirmation of the record under Rule XI.

XI. When the record of any circuit or other tract, as mentioned in Rule III., shall have been finally revised and amended in accordance with all orders passed by the said officer or the Commissioner of the division under these rules, the record shall be confirmed by an order of the Commissioner of the division to be published in the *Calcutta Gazette*.

XII. From the date of the publication of such confirmation, the said record shall not be varied or altered otherwise than by an order of the Lieutenant-Governor under Rule X., and such record shall be conclusive evidence as to any right, interest, or other matter which may be entered on it in accordance with the provisions of these rules.

ACT XX. OF 1869.*

THE INDIAN VOLUNTEERS' ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 10TH SEPTEMBER 1869.

An Act to provide for the good order and discipline of Volunteer Corps, and to invest them with certain powers.†

Preamble.

WHEREAS many loyal subjects of Her Majesty have volunteered their services for the protection of life and property and the preservation of the peace, and have, with the sanction of Government, associated and enrolled themselves as military corps under the command of officers appointed for that purpose; and it is expedient to provide for the good order and discipline of such corps, and to invest their members with certain powers; It is hereby enacted as follows:—

Preliminary.

Short Title.

1. This Act may be called "The Indian Volunteers' Act, 1869."

Extent of Act.

2. This Act shall extend to the whole of British India and (so far as regards British subjects) to the dominions of Native Princes and States in alliance with Her Majesty.

3. [*Repealed by Act XIV. of 1870.*]

"Magistrate."

4. In this Act "Magistrate" means, within the limits of the Presidency Towns, a Magistrate of Police and, without those limits, a person exercising the full powers of Magistrate.

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* Act XX. of 1869 has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886.

It is included in the Schedule to the Santál Parganas Laws Regulation (III. of 1886).

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

The Districts of Hazaribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum.—See *Gazette of India*, 22nd October, 1881, Pt. I, p. 504.

† As to requiring volunteers to assist in dispersing unlawful assemblies, see Act X. of 1882, s. 130.

* A Code of Regulations for the volunteer forces in India has been framed by order of the Governor-General in Council, and was published in a separate form, and circulated by the Military Department, G. O. No. 1203 of 1875, dated 1st December 1875.

Formation and Dissolution of Volunteer Corps.

Formation of Corps.

5. Corps of Volunteers may, with the sanction of the Governor-General of India in Council, or of the Local Government, be formed in any part of British India of the said dominions.

Certificate of commanding officer to be evidence of enrolment.

6. A certificate of enrolment in such corps, signed by the commanding officer thereof, shall be *primâ-facie* evidence of such enrolment.

Power to disband corps or remove members.

7. The Governor-General of India in Council or the Local Government** may disband any corps formed or enrolled under the provisions of this Act, or of Act No. XXIII. of 1857, or remove from such corps any member thereof.

Application of Articles of War.

Volunteers subjected to Articles of War so far as they apply to officers.

8. Every member of a corps of Volunteers shall, for all military offences of which he shall be guilty whilst on actual duty or on parade, be subject to the Articles of War for the time being in force for the better government of Her Majesty's Army, so far as the same are applicable to officers and consistent with the provisions of this Act.

Proviso.

Provided that no such member shall, for any offence against the said Articles, be subject to the punishment of death.

Courts-martial.

Appointment of, and sentences by, General Courts-martial.

9. General Courts-martial shall be convened and appointed by the commanding officer of the corps, with the sanction of the Local Government, for the trial of military offences of which any member of such corps shall be guilty whilst on actual duty.

No sentence of such Courts-martial shall be put into execution until after a report of the whole proceedings shall have been made to, and the sentence shall have been confirmed by, the Local Government.

The Local Government may commute any such sentence for a less punishment, or pardon the offender.

General Courts-martial of whom to be composed.

10. General Courts-martial shall consist of not less than nine members of the corps, and every member of the corps, whether an officer or not, shall be competent to sit and act as a member of such Court-martial.

Regimental Courts-martial.

11. Regimental Courts-martial may be convened by the commanding officer of the corps, and shall consist of not less than three members of the corps.

Procedure of Courts-martial held under this Act.

12. The proceedings of Courts-martial convened under this Act shall be conducted according to the laws and customs applicable to Courts-martial held under the said Articles of War, except so far as the same are inconsistent with the provisions of this Act.

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* The Chief Commissioner of Mysore and Coorg has been invested with the powers of a Local Government under this Act in respect to all matters connected with the Bangalore Rifle Volunteers.

Act XX. of 1869.

Withdrawal from Corps.

Power to quit the corps.

13. Any person enrolled as a member of a corps of Volunteers, whether he shall have been elected or commissioned as an officer in such corps or not, may, except whilst on actual duty, quit the corps upon giving to the officer commanding the corps seven days' previous notice in writing of his intention so to do, or without such notice if the commanding officer of the corps shall consider it reasonable and allow him so to do.

Commissions to officers to cease on retirement or dismissal.

14. Every commission to any member of a corps of Volunteers appointing him an officer in such corps shall cease upon his retirement or dismissal from the corps.

Delivery of arms belonging to Government by members quitting the corps.

15. Every member of a corps of Volunteers who shall have received any arms, ammunition, accoutrements, or uniform belonging to Government, or which shall have been furnished from the public stores, or at the public expense, shall, upon his quitting such corps,

or upon his dismissal therefrom,

or whenever he shall be required so to do by the commanding officer of the corps,

or whenever the corps shall be disbanded,

deliver up to the commanding officer, or such person as he shall appoint to receive the same, all such arms, ammunition, accoutrements, and uniform in good order and condition, reasonable wear thereof only excepted ;

and in default thereof he shall pay such sum of money as shall be adjudged by a Regimental Court-martial to be assembled for that purpose by the commanding officer of the corps. A copy of such adjudication, signed by the president of the Court-martial, shall be sent to the principal Court of original civil jurisdiction in the district in which the adjudication shall have been given, and shall be executed by such Court as if it were a decree for money under the Code of Civil Procedure.

Local Limits of Service.

No member bound to serve beyond certain distance.

16. No member of a corps of Volunteers shall be bound, without his consent, to serve or proceed on duty beyond the limits within which he shall have voluntarily engaged to serve or proceed on duty in accordance with the terms upon which the corps to which he belongs shall have been constituted ; and in case no such limits shall have been fixed, he shall not be liable to serve or proceed on duty beyond four miles from the place at which he was enrolled.

Rules.

Commanding Officer to frame rules which shall be binding on the members.

17. The commanding officer of every corps of Volunteers may frame such general rules as he may think fit for regulating the times at which, and the manner in which, the duties of the corps and of the several members or detachments thereof shall be discharged.

Such rules, when sanctioned by the Local Government, shall be binding on the corps and on the several members thereof.

Penalties.

Not attending actual duty other than drill or parade.

18. If any member of a corps of Volunteers, being warned for actual duty other than drill or parade, shall, without reasonable excuse, neglect to attend such duty, he shall be liable, upon conviction by a General Court-martial, to a fine not exceeding one hundred rupees, or to simple dismissal from the corps, or to dismissal from the corps as unworthy to belong to it.

Not attending drill or parade.

19. If any member of such corps shall, without reasonable excuse, neglect to attend drill or parade at such times as may be appointed for that purpose,

Other minor military offence.

or shall be guilty of any neglect of duty or other military offence which in the judgment of the commanding officer of the corps will be sufficiently punished by a small fine,

he shall be liable to pay such fine, not exceeding fifty rupees, as a Regimental Court-martial shall impose.

Punishment for non-payment of fine.

20. If any member of such corps shall neglect or refuse to pay any fine to which he shall be sentenced by any Court-martial, within such time as shall be fixed by the commanding officer of the corps, he may be dismissed by the said commanding officer from the said corps; and every such dismissal shall be recorded and reported to the Local Government.

Penalty for assaulting or resisting Volunteers in discharge of their duty.

21. Whoever assaults or resists, or abets within the meaning of the Indian Penal Code any person in assaulting or resisting, any member of such corps in the discharge of his duty, shall be punishable, on conviction before a Magistrate, with fine not exceeding two hundred rupees, or with imprisonment for any term not exceeding six months, or with both.

Recovery of fines.

22. In default of payment of any fine imposed by a Court-martial under this Act, a copy of the sentence of the Court-martial imposing the fine, signed by the president of such Court, may be sent to a Magistrate in the presidency town or the district in which the fine shall have been imposed, who shall thereupon cause the fine to be recovered as if he had himself imposed it.

Fines imposed under section twenty-one may be recovered, "in the manner provided by the law for the time being in force for the recovery of fines imposed by criminal Courts."*

Powers of Volunteers.

Power to disarm persons:

23. Any member of a corps of Volunteers, whenever he may be in discharge of his duty as a member of the corps, and wheresoever he may then be, may disarm any person not being in Her Majesty's military or naval service or a police-officer, found between sunset and sunrise in any public street, thoroughfare, or other public place, armed with a sword, spear, gun, or other warlike instrument, without a pass or license for that purpose from the Commissioner of Police or other officer authorized by Government to grant the same;

* The words quoted have been substituted for the original by Act XII. of 1891, Sch. II.

Act XX. of 1869.

and may also disarm any person found armed at any time contrary to law or to any order of Government in any public street, thoroughfare, or other public place ;

And to apprehend and deliver to police.

and may also apprehend and deliver over to a police-officer any person so found armed in order that he may be dealt with according to law ;

Forfeiture of weapons seized.

and the weapon so seized shall be forfeited to Government or otherwise dealt with according to law, or to the orders of Government.

24. Any member of such corps, whenever he is on duty, may prevent any disturbance of the public peace, and disperse any persons whom he may find assembled together to the number of five or more without reasonable cause between sunset and sunrise in any public street, thoroughfare, or other public place in which such member of the said corps may be in the discharge of his duty,

Power to prevent disturbances of the public peace.

To disperse unlawful assemblies.

and may also apprehend any person reasonably suspected of having committed, or being about to commit, any offence against the State, or of having abetted within the meaning of the Indian Penal Code, or being about to abet, any other person, in the commission of such offence ; and deliver him over to some police-officer.

To apprehend certain suspected persons.

Miscellaneous.

25. Every mounted officer, and every mounted orderly of a corps of Volunteers, and every member of such corps, while he belongs to a troop of cavalry in such corps, shall be at liberty to keep one horse without being liable to pay in respect thereof any municipal or other tax imposed upon horses.

Exemption from horse-tax.

26.* No suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amends, nor after the expiration of three months from the accrual of the cause of suit or other proceeding.

Suits for things done in pursuance of this Act.

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* Repealed, so far as it relates to the limitation of suits, by Act IX. of 1871.

ACT I. OF 1870.*

RECEIVED THE G.-G.'S ASSENT ON THE 14TH JANUARY 1870.

An Act to provide Rules Relating to Quarantine.

Preamble.

WHEREAS it is expedient to empower expressly the Governor-General of India in Council and the Local Governments to make rules relating to quarantine; It is hereby enacted as follows:—

Power to make quarantine rules.

1. It shall be lawful for the Governor-General of India in Council and (with the previous sanction of the said Governor-General in Council) for the Local Governments respectively, from time to time, to make rules

for putting any vessel into a state of quarantine;

for regulating the intercourse of vessels in a state of quarantine with the shore, or with other vessels; and

for regulating the intercourse between ports where an infectious disease prevails and other ports.

Quarantine rules to be deemed rules under section 271 of Penal Code.

2. All such rules shall be published in the *Gazette of India* and also in the local Gazette,† and shall thereupon be deemed to be rules made and promulgated under section 271 of the Indian Penal Code.

ACT V. OF 1870.‡

RECEIVED THE G.-G.'S ASSENT ON THE 4TH FEBRUARY 1870.

An Act to enable the High Courts at the Presidency Towns to deal with costs of petitions for certain moneys transferred to Government.

Preamble.

WHEREAS the High Courts of Judicature at Fort William, Madras, and Bombay, have no power to deal with the costs of petitions under section four of Act No. XXV. of 1866 (*to transfer to the Government of India certain securities and moneys deposited in the High Courts of Judicature at Fort William, Madras, and Bombay*),†

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* Act I. of 1870 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh	See *Gazette of India*	April 9, 1881, Pt. I., p. 152.
Aden	Ditto	June 28, 1879, Pt. I., p. 434.
The District of Silhat	Ditto	Oct. 4, 1879, Pt. I., p. 631.
The Island of Perim	Ditto	Jan. 1, 1887, Pt. I., p. 5.

It has been declared, under the same Act, not to be in force in the Scheduled District of Lahaul.—See *Gazette of India*, May 1, 1886, Pt. I., p. 301.

† See rules for twenty-two Madras Ports, *Gazette of India*, 14th Sep. 1872, p. 872, *Fort St. George Gazette*, 1st Oct. 1872, p. 1617: Supplementary Rules, *Gazette of India*, 4th Oct. 1873, p. 881: Port Surgeons, *Fort St. George Gazette*, 7th Sep. 1875, p. 1509.

Rules for eight Burmese Ports, *Gazette of India*, 29th March 1873, p. 271.

‡ The portions relating to the Administrator-General, which were repealed by Act II. of 1874, have been omitted.

Act VII. of 1870.

for payment of certain securities, moneys, or proceeds transferred to Government; And whereas it is expedient to confer such power upon the said High Courts; It is hereby enacted as follows :—

Power to direct by whom costs are to be paid.

1. Whenever any of the said Courts shall make an order on any such petition, the Court may direct by whom the whole or any part of the costs of each party are to be paid.

ACT VII. OF 1870.*

THE COURT FEES ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 11TH MARCH 1870.

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Court Fees Act, 1870:"

Extent of Act.

It extends to the whole of British India;

Commencement of Act.

And it shall come into force on the first day of April 1870.

2. [*Repealed by Act XIV. of 1870.*]

CHAPTER II.

FEES IN THE HIGH COURTS AND IN THE COURTS OF SMALL CAUSES AT THE PRESIDENCY-TOWNS.

Levy of fees in High Courts on their original sides.

3. The fees payable for the time being to the clerks and officers (other than the sheriffs and attorneys) of the High Courts established by Letters Patent, by virtue of the power conferred by Statute 24 and 25 Victoria, chapter 104, section 15,

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* Act VII. of 1870 has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886.

It is included in the Schedule to the Santál Parganas Laws Regulation, III. of 1886.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

The District of Hazáribágh	See *Gazette of India*	Oct. 22, 1881, Pt. I., p. 507.
The District of Lohárdaga	Ditto	Oct. 22, 1881, Pt. I., p. 508.
The District of Mánbhum	Ditto	Oct. 22, 1881, Pt. I., p. 509.
Pargana Dhálbhum in the District of Singbhum	Ditto	Oct. 22, 1881, Pt. I., p. 510.
The North-Western Provinces Tarái	Ditto	Sep. 23, 1876, Pt. I., p. 505.

It has been declared, under the same Act, not to be in force in the following Scheduled Districts :—

The Garo Hills District, the Khási and Jaintia Hills District, and the Naga Hills District.—See *Gazette of India*, Apl. 26, 1884, Pt. I., p. 164.

The Act has been declared inapplicable to proceedings before officers, making a settlement, and in certain other cases, under the Santál Parganas Settlement Regulation, 1872.—See Regulation III. of 1872, s. 8.

For special provisions, regarding the Judicial Commissioner and the Special Court of Lower Burma, see Act XVII. of 1875, ss. 37 and 83.

or chargeable in each of such Courts under No. 11 of the First, and Nos. 7, 12, 14,* 20, and 21 of the Second Schedule to this Act annexed; Act VII. of 1870.

and the fees for the time being chargeable in the Courts of Small Causes at the Presidency-towns† and their several offices;

Levy of fees in Presidency Small Cause Courts.

shall be collected in manner hereinafter appearing.‡

4. No document of any of the kinds specified in the First or Second Schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited, or recorded in, or shall be received or furnished by, any of the said High Courts in any case coming before such Court in the exercise of its extraordinary original civil jurisdiction;

Fees on documents filed, &c., in High Courts in their extraordinary jurisdiction.

or in the exercise of its extraordinary original criminal jurisdiction;

or in the exercise of its jurisdiction as regards appeals from the judgment of two or more Judges of the said Court, or of a Division Court;

In their appellate jurisdiction.

or in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence;

or in the exercise of its jurisdiction as a Court of reference or revision;

As Courts of reference and revision.

unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

5. When any difference arises between the officer whose duty it is to see that any fee is paid under this chapter, and any suitor or attorney, as to the necessity of paying a fee or the amount thereof, the question shall, when the difference arises in any of the said High Courts, be referred to the taxing-officer, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the Chief Justice of such High Court, or of such Judge of the High Court as the Chief Justice shall appoint either generally or specially in this behalf.

Procedure in case of difference as to necessity or amount of fee.

When any such difference arises in any of the said Courts of Small Causes, the question shall be referred to the Clerk of the Court, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the First Judge of such Court.

The Chief Justice shall declare who shall be taxing-officer within the meaning of the first paragraph of this section.

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* Here the word sixteen (or rather the figures 16) has been omitted, having been repealed by Act XII. of 1891.

† See Act XV. of 1882, Ch. X.

‡ For amount of fees payable in certain cases under the N.-W. P. Rent Act, see Act XII. of 1881, s. 95, as amended by Act XIV. of 1886, s. 2.

Act VII. of 1870.

CHAPTER III.

FEES IN OTHER COURTS AND IN PUBLIC OFFICES.

Fees on documents filed, &c., in Mufassal Courts or in public offices.

6. Except in the Courts hereinbefore mentioned, no document of any of the kinds specified as chargeable in the First or Second Schedule to this Act annexed shall be filed, exhibited, or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

Computation of fees payable in certain suits:

7.* The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:—

for money:

i. In suits for money (including suits for damages or compensation, or arrears of maintenance or annuities, or of other sums payable periodically)—according to the amount claimed:

for maintenance and annuities:

ii. In suits for maintenance and annuities or other sums payable periodically—according to the value of the subject-matter of the suit, and such value shall be deemed to be ten times the amount claimed to be payable for one year:

for other moveable property having a market-value.

iii. In suits for moveable property other than money, where the subject-matter has a market-value—according to such value at the date of presenting the plaint:

iv. In suits—

for moveable property of no market-value:

(*a*) for moveable property where the subject-matter has no market-value, as, for instance, in the case of documents relating to title,

to enforce a right to share in joint-family property:

(*b*) to enforce the right to share in any property on the ground that it is joint-family property,

for a declaratory decree and consequential relief:

(*c*) to obtain a declaratory decree or order, where consequential relief is prayed,

for an injunction:

(*d*) to obtain an injunction,

for easements:

(*e*) for a right to some benefit (not herein otherwise provided for) to arise out of land, and

for accounts:

(*f*) for accounts—

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.

In all such suits the plaintiff shall state the amount at which he values the relief sought.†

for possession of land, houses, and gardens:

v. In suits for the possession of land, houses, and gardens—according to the value of the subject-matter; and such value shall be deemed to be—

where the subject-matter is land, and—

(*a*) where the land forms an entire or a definite share of an estate paying annual revenue to Government,

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* For valuation of suits for jurisdictional purposes, see the Suits Valuation Act (VII. of 1887), *infra*.

† Here certain words, repealed by Act XII. of 1891, have been omitted.

or forms part of such an estate, and is recorded in the Collector's register as separately assessed with such revenue, Act VII. of 1870.

and such revenue is permanently settled—

ten times the revenue so payable :

(*b*) where the land forms an entire estate, or a definite share of an estate paying annual revenue to Government, or forms part of such estate, and is recorded as aforesaid ;

and such revenue is settled, but not permanently—

five times the revenue so payable :

(*c*) where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue,

and nett profits have arisen from the land during the year next before the date of presenting the plaint—

fifteen times such nett profits :

but where no such nett profits have arisen therefrom—the amount at which the Court shall estimate the land with reference to the value of similar land in the neighbourhood :

(*d*) where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate, and is not separately assessed as above-mentioned—the market-value of the land :

Provided that, in the territories subject to the Governor of Bombay in Council, the value of the land shall be deemed to be— Proviso as to Bombay Presidency.

(1) where the land is held on settlement for a period not exceeding thirty years, and pays the full assessment to Government—a sum equal to five times the survey-assessment ;

(2) where the land is held on a permanent settlement, or on a settlement for any period exceeding thirty years, and pays the full assessment to Government—a sum equal to ten times the survey-assessment ; and

(3) where the whole or any part of the annual survey-assessment is remitted—a sum computed under paragraph (1) or paragraph (2) of this proviso, as the case may be, in addition to ten times the assessment or the portion of assessment so remitted :

Explanation.—The word 'estate,' as used in this paragraph, means any land subject to the payment of revenue, for which the proprietor, or a farmer or raiyat, shall have executed a separate engagement to Government, or which, in the absence of such engagement, shall have been separately assessed with revenue :

(*e*) where the subject-matter is a house or garden—according to the market-value of the house or garden : for houses and gardens :

vi. In suits to enforce a right of pre-emption—according to the value (computed in accordance with paragraph v. of this section) of the land, house, or garden in respect of which the right is claimed : to enforce a right of pre-emption :

vii. In suits for the interest of an assignee of land-revenue—fifteen times his nett profits as such for the year next before the date of presenting the plaint : for interest of assignee of land-revenue.

Act VII. of 1870.

viii. In suits to set aside an attachment of land or of an interest in land or revenue—according to the amount for which the land or interest was attached :

to set aside an attachment :

Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest :

to redeem :

ix. In suits against a mortgagee for the recovery of the property mortgaged,

to foreclose :

and in suits by a mortgagee to foreclose the mortgage,

or, where the mortgage is made by conditional sale, to have the sale declared absolute—

according to the principal money expressed to be secured by the instrument of mortgage :

For specific performance.

x. In suits for specific performance—

(*a*) of a contract of sale—according to the amount of the consideration :

(*b*) of a contract of mortgage—according to the amount agreed to be secured :

(*c*) of a contract of lease—according to the aggregate amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term :

(*d*) of an award—according to the amount or value of the property in dispute :

between landlord and tenant.

xi. In the following suits between landlord and tenant :—

(*a*) for the delivery by tenant of the counterpart of a lease,

(*b*) to enhance the rent of a tenant having a right of occupancy,

(*c*) for the delivery by a landlord of a lease,

(*d*) to contest a notice of ejectment,

(*e*) to recover the occupancy of land from which a tenant has been illegally ejected by the landlord, and

(*f*) for abatement of rent—

according to the amount of the rent of the land to which the suit refers payable for the year next before the date of presenting the plaint.

Fee on memorandum of appeal against order relating to compensation.

8. The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes* shall be computed according to the difference between the amount awarded and the amount claimed by the appellant.

Power to ascertain nett profits or market-value.

9. If the Court sees reason to think that the annual nett profits or the market-value of any such land, house, or garden as is mentioned in section 7, paragraphs v. and vi., have or has been wrongly estimated, the Court may, for the purpose of computing the fee payable in any suit therein mentioned, issue a commission to any proper person, directing him to make such local or other investigation as may be necessary, and to report thereon to the Court.

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* See Act X. of 1870.

10. i. If, in the result of any such investigation, the Court finds that the nett profits or market-value have or has been wrongly estimated, the Court, if the estimation has been excessive, may, in its discretion, refund the excess paid as such fee; but, if the estimation has been insufficient, the Court shall require the plaintiff to pay so much additional fee as would have been payable had the said market-value or nett profits been rightly estimated:

Procedure where nett profits or market-value wrongly estimated.

ii. In such case the suit shall be stayed until the additional fee is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.*

11. In suits for mesne-profits, or for immoveable property and mesne-profits, or for an account, if the profits or amount decreed are or is in excess of the profits claimed or the amount at which the plaintiff valued the relief sought, the decree shall not be executed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or amounts so decreed shall have been paid to the proper officer.

Procedure in suits for mesne-profits or account when amount decreed exceeds amount claimed.

Where the amount of mesne-profits is left to be ascertained in the course of the execution of the decree, if the profits so ascertained exceed the profits claimed, the further execution of the decree shall be stayed until the difference between the fee actually paid, and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

12. i. Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this chapter on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit:

Decision of questions as to valuation.

ii. But, whenever any such suit comes before a Court of appeal, reference, or revision, if such Court considers that the said question has been wrongly decided, to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided, and the provisions of section 10, paragraph ii., shall apply.

13. If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the Code of Civil Procedure,† is ordered to be received, or if a suit is remanded in appeal, on any of the grounds mentioned in section 562 of the same Code,† for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate, authorizing him to receive back from the Collector the full amount of fee paid on the memorandum of appeal:

Refund of fee paid on memorandum of appeal.

Provided that, if, in the case of a remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorize the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.

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* In s. 10, cl. iii., having been repealed by Act XII. of 1891, has been omitted.

† See Act XIV. of 1882, s. 3.

Act VII. of 1870.

Refund of fee on application for review of judgment.

14. Where an application* for a review of judgment† is presented on or after the ninetieth day from the date of the decree, the Court, unless the delay was caused by the applicant's laches, may, in its discretion, grant him a certificate, authorizing him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before such day.‡

Refund where Court reverses or modifies its former decision on ground of mistake.

15. Where an application for a review of judgment is admitted, and where, on the re-hearing, the Court reverses or modifies its former decision on the ground of mistake in law or fact, the applicant shall be entitled to a certificate from the Court authorizing him to receive back from the Collector so much of the fee paid on the application § as exceeds the fee payable on any other application to such Court under the Second Schedule to this Act, No. 1, clause (*b*) or clause (*d*).

But nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due, wholly or in part, to fresh evidence which might have been produced at the original hearing.

Additional fee where respondent takes objection to unappealed part of decree.

16. When any appeal is presented to a Civil Court, not against the whole of a decision, but only against so much thereof as relates to a portion of the subject-matter of the suit, and, on the hearing of such appeal, the respondent takes, under section 561 of the Code of Civil Procedure,‖ an objection to any part of the said decision other than the part appealed against, the Court shall not hear such objection until the respondent shall have paid the additional fee, which would have been payable had the appeal comprised the part of the decision so objected to.

Multifarious suits.

17. Where a suit embraces two or more distinct subjects, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in suits embracing separately each of such subjects would be liable under this Act.

Nothing in the former part of this section shall be deemed to affect the power conferred by the Code of Civil Procedure, section 45, paragraph 2.‖

Written examination of complainants.

18. When the first or only examination of a person who complains of the offence of wrongful confinement, or of wrongful restraint, or of any offence other than an offence for which police-officers may arrest without a warrant, and who has not already presented a petition on which a fee has been levied under this Act, is reduced to writing under the provisions of the Code of Criminal Procedure,¶ the complainant shall pay a fee of eight annas, unless the Court thinks fit to remit such payment.

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* As to refund of fees paid on applications to the Chief Court or the Court of the Financial Commissioner of the Panjàb for the exercise of its revisional jurisdiction under s. 622 of the Code of Civil Procedure, see Act XVIII. of 1884, s. 72.

† See Act XIV. of 1882, s. 623.

‡ See Sch. I., Nos. 4 and 5, *infra*.

§ See Act XX. of 1870.

‖ See Act XIV. of 1882, s. 3.

¶ See Act X. of 1882, s. 3.

Exemption of certain documents.

19. Nothing contained in this Act shall render the following documents chargeable with any fee :— Act VII. of 1870.

i. Power-of-attorney to institute or defend a suit when executed by an officer, warrant-officer, non-commissioned officer, or private of Her Majesty's army not in civil employment.

ii. [*Repealed by Act XII. of 1891.*]

iii. Written statements called for by the Court after the first hearing of a suit.

iv. [*Repealed by the Cantonments Act (XIII. of 1889), s. 2 and Sch.*]

v. Plaints in suits tried by Village Munsifs* in the Presidency of Fort St. George.

vi. Plaints and processes in suits before District Panchayats in the same Presidency.

vii. Plaints in suits before Collectors under Madras Regulation XII. of 1816.

viii. Probate of a will, letters of administration, "and, save as regards debts and securities, a certificate under Bombay Regulation VIII. of 1827,"† where the amount or value of the property in respect of which the probate or letters or certificate shall be granted does not exceed one thousand rupees.

ix. Application or petition to a Collector or other officer making a settlement of land-revenue, or to a Board of Revenue, or a Commissioner of Revenue, relating to matters connected with the assessment of land or the ascertainment of rights thereto or interests therein, if presented previous to the final confirmation of such settlement.

x. Application relating to a supply for irrigation of water belonging to Government.

xi. Application for leave to extend cultivation, or to relinquish land, when presented to an officer of land-revenue by a person holding, under direct engagement with Government, land of which the revenue is settled, but not permanently.

xii. Application for service of notice of relinquishment of land or of enhancement of rent.

xiii. Written authority to an agent to distrain.

xiv. First application (other than a petition containing a criminal charge or information) for the summons of a witness or other person to attend either to give evidence or to produce a document, or in respect of the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court.

xv. Bail-bonds in criminal cases, recognizances to prosecute or give evidence, and recognizances for personal appearance or otherwise.

xvi. Petition, application, charge, or information respecting any offence when presented, made, or laid to or before a police-officer, or to or before the heads of villages‡ or the village-police§ in the terri-

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* See Mad. Regulation IV. of 1816.

† The words quoted have been substituted for the words, "and certificate mentioned in the First Schedule to this Act annexed, No. 12," by the Succession Certificate Act (VII. of 1889), s. 13 (2).

‡ See Mad. Regulations XI. of 1816 and IV. of 1821, s. 6.

§ See Bom. Act VIII. of 1867, ss. 14, 15, and 16.

Act VII. of 1870.

tories respectively subject to the Governors in Council of Madras and Bombay.

xvii. Petition by a prisoner or other person in duress or under restraint of any Court or its officers.

xviii. Complaint of a public servant (as defined in the Indian Penal Code), a municipal officer, or servant of a Railway Company.

xix. Application for permission to cut timber in Government forests, or otherwise relating to such forests.

xx. Application for the payment of money due by Government to the applicant.

xxi. Petition of appeal against the chaukidari assessment under Act No. XX. of 1856, or against any municipal tax.

xxii. Applications for compensation under any law for the time being in force relating to the acquisition of property for public purposes.

xxiii. Petitions presented to the Special Commissioner appointed under Bengal Act No. II. of 1869 (*to ascertain, regulate, and record certain tenures in Chutia Nagpur*).

xxiv. Petitions under the* Indian Christian Marriage Act, 1872, sections 45 and 48.

CHAPTER IIIA.†

PROBATES, LETTERS OF ADMINISTRATION, AND CERTIFICATES OF ADMINISTRATION.

Relief where too high a court-fee has been paid.

19A.‡ Where any person, on applying for the probate of a will or letters of administration, has estimated the property of the deceased to be of greater value than the same has afterwards proved to be, and has consequently paid too high a court fee thereon, if, within six months after the true value of the property has been ascertained, such person produces the probate or letters to the Chief Controlling Revenue Authority of the province in which the probate or letters has or have been granted,

and delivers to such Authority a particular inventory and valuation of the property of the deceased, verified by affidavit or affirmation,

and if such Authority is satisfied that a greater fee was paid on the probate or letters than the law required,

the said Authority may—

(*a*) cancel the stamp on the probate or letters, if such stamp has not been already cancelled;

(*b*) substitute another stamp for denoting the court-fee which should have been paid thereon; and

(*c*) make an allowance for the difference between them as in the case of spoiled stamps, or repay the same in money, at his discretion.

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* This clause has been substituted for the original by the Indian Christian Marriage Act (XV. of 1872), s. 2.

† This chapter has been inserted by Act XIII. of 1875 (*an Act to amend the Law relating to Probates and Letters of Administration*), s. 6.

‡ Compare 55 Geo. III., c. 184, s. 40.

19B.* Whenever it is proved to the satisfaction of such Authority that an executor or administrator has paid debts due from the deceased to such an amount as, being deducted out of the amount or value of the estate, reduces the same to a sum which, if it had been the whole gross amount or value of the estate, would have occasioned a less court-fee to be paid on the probate or letters of administration granted in respect of such estate than has been actually paid thereon under this Act, Act VII. of 1870.

Relief where debts due from a deceased person have been paid out of his estate.

such Authority may return the difference, provided the same be claimed within three years after the date of such probate or letters.

But when, by reason of any legal proceeding, the debts due from the deceased have not been ascertained and paid, or his effects have not been recovered and made available, and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the said term of three years, the said Authority may allow such further time for making the claim as may appear to be reasonable under the circumstances.

19C. Whenever† a grant of probate or letters of administration has been or is made in respect of the whole of the property belonging to an estate, and the full fee chargeable under this Act has been or is paid thereon, no fee shall be chargeable under the same Act when a like grant is made in respect of the whole or any part of the same property belonging to the same estate.

Relief in case of several grants.

Whenever such a grant has been or is made in respect of any property forming part of an estate, the amount of fees then actually paid under this Act shall be deducted when a like grant is made in respect of property belonging to the same estate, identical with or including the property to which the former grant relates.

19D.‡ The probate of the will, or the letters of administration of the effects, of any person deceased, heretofore or hereafter granted, shall be deemed valid and available by his executors or administrators for recovering, transferring, or assigning any moveable or immoveable property whereof or whereto the deceased was possessed or entitled, either wholly or partially, as a trustee, notwithstanding the amount or value of such property is not included in the amount or value of the estate in respect of which a court-fee was paid on such probate or letters of administration.

Probates declared valid as to trust-property, though not covered by court-fee.

19E.§ Where any person, on applying for probate or letters of administration, has estimated the estate of the deceased to be of less value than the same has afterwards proved to be, and has in consequence paid too low a Court-fee thereon, the Chief Controlling Revenue Authority of the province in which the probate or letters has or have been granted may, on the value of the estate of the deceased being verified by affidavit or affirmation, cause the probate or letters of administration to be duly stamped on payment of the full court-fee which ought to have been originally paid thereon in respect of such value and of the further penalty, if the probate or letters is or are produced within one year from

Provision for case where too low a court-fee has been paid on probates, &c.

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* Compare 55 Geo. III., c. 184, s. 51.

† Here the word "such," repealed by Act XII. of 1891, has been omitted.

‡ Compare 48 Geo. III., c. 149, s. 35.

§ Compare 55 Geo. III., c. 184, s. 41.

Act VII. of 1870.

the date of the grant, of five times, or, if it or they is or are produced after one year from such date, of twenty times, such proper court-fee, without any deduction of the court-fee originally paid on such probate or letters:

Provided that, if the application be made within six months after the ascertainment of the true value of the estate and the discovery that too low a court-fee was at first paid on the probate or letters, and if the said Authority is satisfied that such fee was paid in consequence of a mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, and without any intention of fraud or to delay the payment of the proper court-fee, the said Authority may remit the said penalty, and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been at first paid thereon.

Administrator to give proper security before letters stamped under section 19E.

19F.* In the case of letters of administration on which too low a court-fee has been paid at first, the said Authority shall not cause the same to be duly stamped in manner aforesaid, until the administrator has given such security to the Court by which the letters of administration have been granted as ought by law to have been given on the granting thereof, in case the full value of the estate of the deceased had been then ascertained.

Executors, &c., not paying full court-fee on probates, &c., within six months after discovery of under-payment.

19G.† Where too low a court-fee has been paid on any probate or letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator acting under such probate or letters does not, within six months after the first day of April 1875, or after the discovery of the mistake, or of any effects not known at the time to have belonged to the deceased, apply to the said Authority, and pay what is wanting to make up the court-fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum of one thousand rupees, and also a further sum at the rate of ten rupees per cent. on the amount of the sum wanting to make up the proper court-fee.‡

19H. [*Repealed by the Guardians and Wards Act (VIII. of 1890), s. 2 and Sch.*]

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* Compare 55 Geo. III., c. 184, s. 42.

† Compare 55 Geo. III., c. 184, s. 43.

‡ Any penalty or forfeiture under section 19G or section 19H of the Court-fees Act, 1870, may, on the certificate of the Chief Controlling Revenue Authority, be recovered from the executor or administrator as if it were an arrear of land-revenue by any Collector in any part of British India. The Chief Controlling Revenue Authority may remit the whole or any part of any such penalty or forfeiture, or any part of any further penalty payable under section 19E of the said Act.—See Probate and Administration Act (VI. of 1889), s. 20.

CHAPTER IV.*

PROCESS FEES.

Rules as to costs of processes.

20. The High Court shall, as soon as may be, make rules as to the following matters :—

i. The fees chargeable for serving and executing processes issued by such Court in its appellate jurisdiction, and by the other Civil† Courts established within the local limits of such jurisdiction ;

ii. the fees chargeable for serving and executing processes issued by the Criminal Courts established within such limits in the case of offences other than offences for which police-officers may arrest without a warrant ; and

iii. the remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes.

The High Court may, from time to time, alter and add to the rules so made.

Confirmation and publication of rules.

All such rules, alterations, and additions, shall, after being confirmed by the Local Government, and sanctioned by the Governor-General of India in Council, be published in the local official Gazette, and shall thereupon have the force of law.

Until such rules shall be so made and published, the fees now leviable for serving and executing processes shall continue to be levied, and shall be deemed to be fees leviable under this Act.

Table of process-fees.

21. A Table in the English and Vernacular languages, showing the fee chargeable for such service and execution, shall be exposed to view in a conspicuous part of each Court.

Number of District and Subordinate Courts.

22. Subject to rules to be made by the High Court, and approved by the Local Government and the Governor-General of India in Council,

every District Judge and every Magistrate of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court and each of the Courts subordinate thereto ;

Number of peons in Mufassal Small Cause Courts.

and for the purposes of this section, every Court of Small Causes established under Act No. XI. of 1865 (*to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature*) shall be deemed to be subordinate to the Court of the District Judge.

23. [*Repealed by the Panjab Land Revenue Act (XVII. of 1887).*]

24. [*Repealed by Act XII. of 1891.*]

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* As to the power of the Recorder of Rangoon and the Judicial Commissioner of Lower Burma to make rules and prescribe fees for processes, see Act XVII. of 1875, ss. 68 and 74. As to the power of the Judicial Commissioner of Upper Burma to make rules and regulate the fees to be paid for civil processes, see Regulation VIII. of 1886, s. 88 (2) (*a*). As to the power of the Bombay High Court to prescribe fees for processes issued by Courts constituted under the Bombay Civil Courts Act, 1869, see Act XIV. of 1869, s. 42. As to the computation of certain fees on applications under s. 95 of the North-Western Provinces Rent Act, 1881, see that section as amended by s. 2 of Act XIV. of 1886.

† In s. 20, cl. *i.*, the words "and Revenue," repealed by the Panjab Land Revenue Act (XVII. of 1887), have been omitted.

Act VII. of 1870.

CHAPTER V.

OF THE MODE OF LEVYING FEES.

Collection of fees by stamps.

25. All fees referred to in section 3, or chargeable under this Act, shall be collected by stamps.

Stamps to be impressed or adhesive.

26. The stamps used to denote any fee chargeable under this Act shall be impressed or adhesive, or partly impressed and partly adhesive, as the Governor-General of India in Council may, by notification in the *Gazette of India*, from time to time direct.

Rules for supply, number, renewal, and keeping accounts of stamps.

27. The Local Government may, from time to time, make rules for regulating—

(*a*) the supply of stamps to be used under this Act,

(*b*) the number of stamps to be used for denoting any fee chargeable under this Act.

(*c*) the renewal of damaged or spoiled stamps, and

(*d*) the keeping accounts of all stamps used under this Act:

Provided that, in the case of stamps used under section 3 in a High Court, such rules shall be made with the concurrence of the Chief Justice of such Court.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

Stamping documents inadvertently received.

28. No document which ought to bear a stamp under this Act shall be of any validity, unless and until it is properly stamped.

But, if any such document is, through mistake or inadvertence, received, filed, or used in any Court or office, without being properly stamped, the presiding Judge or the head of the office, as the case may be, or, in the case of a High Court, any Judge of such Court, may, if he thinks fit, order that such document be stamped as he may direct; and, on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance.

Amended document.

29. Where any such document is amended in order merely to correct a mistake, and to make it conform to the original intention of the parties, it shall not be necessary to impose a fresh stamp.

Cancellation of stamp.

30. No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled.

Such officer as the Court or the head of the office may from time to time appoint shall, on receiving any such document, forthwith effect such cancellation by punching out the figure-head so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed.

CHAPTER VI.

MISCELLANEOUS.

Repayment of fees paid on applications to Criminal Courts.

31. i. Whenever an application or petition containing a complaint or charge of an offence, other than an offence for which police-officers may arrest without warrant, is presented to a Criminal Court, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay to the complainant the fee paid on such application or petition.

ii. In the case mentioned in section 18, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay to the complainant the fee, if any, paid by the latter for the examination.

iii. When the complainant has paid fees for serving processes in either of the cases mentioned in the first and second paragraphs of this section, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay such fees to the complainant.

iv. All fees ordered to be repaid under this section may be recovered as if they were fines imposed by the Court.

32. [*Repealed by Act XII. of 1891.*]

Admission in criminal cases of documents for which proper fee has not been paid.

33. Whenever the filing or exhibition in a Criminal Court of a document in respect of which the proper fee has not been paid is, in the opinion of the presiding Judge, necessary to prevent a failure of justice, nothing contained in section 4 or section 6 shall be deemed to prohibit such filing or exhibition.

34.* (*1*) The Local Government may, from time to time, make rules for regulating the sale of stamps to be used under this Act, the persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons.

(*2*) All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

(*3*) Any person appointed to sell stamps who disobeys any rule made under this section, and any person not so appointed who sells or offers for sale any stamp, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Power to reduce or remit fees.

35. The Governor-General of India in Council may, from time to time, by notification in the *Gazette of India*, reduce or remit, in the whole or in any part of British India, all or any of the fees mentioned in the First and Second Schedules to this Act annexed,

and may, in like manner, cancel or vary such order.

Saving of fees to certain officers of High Courts.

36. Nothing in Chapters II. and V. of this Act applies to the commission payable to the Accountant-General of the High Court at Fort William, or to the fees which any officer of a High Court is allowed to receive in addition to a fixed salary.

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* S. 34 has been substituted for the original by Act XII. of 1891.

Act VII. of 1870.

SCHEDULE I.

Ad-valorem Fees.

NUMBER.		PROPER FEE.
1. Plaint or memorandum of appeal (not otherwise provided for in this Act), presented to any Civil or Revenue Court, except those mentioned in section 3.*	When the amount or value of the subject-matter in dispute does not exceed five rupees	Six annas.
	When such amount or value exceeds five rupees, For every five rupees, or part thereof, in excess of five rupees, up to one hundred rupees ...	Six annas.
	When such amount or value exceeds one hundred rupees, For every ten rupees, or part thereof, in excess of one hundred rupees, up to one thousand rupees	Twelve annas.
	When such amount or value exceeds one thousand rupees For every one hundred rupees, or part thereof in excess of one thousand rupees, up to five thousand rupees	Five rupees.
	When such amount or value exceeds five thousand rupees, For every two hundred and fifty rupees, or part thereof, in excess of five thousand rupees, up to ten thousand rupees.	Ten rupees.
	When such amount or value exceeds ten thousand rupees, For every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees ...	Fifteen rupees.
	When such amount or value exceeds twenty thousand rupees, For every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees	Twenty rupees.
	When such amount or value exceeds thirty thousand rupees, For every two thousand rupees, or part thereof in excess of thirty thousand rupees, up to fifty thousand rupees ...	Twenty rupees.
	When such amount or value exceeds fifty thousand rupees, For every five thousand rupees, or part thereof, in excess of fifty thousand rupees	Twenty-five rupees.
	Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be three thousand rupees.	

* To ascertain the proper fee leviable on the institution of a suit, see the Table annexed to this Schedule.

SCHEDULE I.—(continued).

Ad-valorem Fees.

NUMBER.		PROPER FEE.
2. Plaint* in a suit for possession under "the Specific Relief Act, 1877, s. 9." †	... ...	A fee of one-half the amount prescribed in the foregoing scale.
3. [*Repealed by Act No. VIII. of 1871.*]		
4. Application for review of judgment,‡ if presented on or after the ninetieth day from the date of the decree.	... ...	The fee leviable on the plaint or memorandum of appeal.
5. Application for review of judgment,‡ if presented before the ninetieth day from the date of the decree.	... ...	One-half of the fee leviable on the plaint or memorandum of appeal.
6. Copy or translation of a judgment or order not being, or having the force of, a decree.	When such judgment or order is passed by any Civil Court other than a High Court, or by the presiding officer of any Revenue Court or office, or by any other Judicial or Executive Authority—	
	(*a.*)—If the amount or value of the subject-matter is fifty or less than fifty rupees ...	Four annas.
	(*b.*)—If such amount or value exceeds fifty rupees	Eight annas.
	When such judgment or order is passed by a High Court	One rupee.
7. Copy of a decree or order having the force of a decree.	When such decree or order is made by any Civil Court other than a High Court, or by any Revenue Court—	
	(*a.*)—If the amount or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees	Eight annas.
	(*b.*)—If such amount or value exceeds fifty rupees	One rupee.
	When such decree or order is made by a High Court	Four rupees.
8. Copy of any document liable to stamp-duty under the Indian Stamp Act, 1879,§ when left by any party to a suit or proceeding in place of the original withdrawn.	(*a.*)—When the stamp-duty chargeable on the original does not exceed eight annas ...	The amount of the duty chargeable on the original.
	(*b.*)—In any other case	Eight annas.

* See Act XX. of 1870.

† The words quoted have been substituted by Act XII. of 1891 for the words "Act No. XIV. of 1859 (*to provide for the limitation of suits*), section 15."

‡ See Act XIV. of 1882, s. 623.

§ See Act I. of 1879, s. 2.

Act VII. of 1870.

SCHEDULE I.—(continued).

Ad-valorem Fees.

NUMBER.		PROPER FEE.
9. Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account, statement, report, or of the like, taken out of any Civil or Criminal or Revenue Court or office, or from the office of any chief officer charged with the executive administration of a Division.	For every three hundred and sixty words or fraction of three hundred and sixty words	Eight annas.
10. [*Repealed by the Guardians and Wards Act (VIII. of 1890) s. 2 and Sch.*]		
11. Probate of a will or letters of administration with or without will annexed.*	If the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees.	Two per centum on such amount or value: provided that when after the grant of a certificate under the Succession CertificateAct, 1889, or any enactment repealed by that Act, or under theRegulation of the Bombay CodeNo.VIII. of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate,

* Nos. 11, 12, and 12A have been substituted, by the Succession Certificate Act (VII. of 1889), s. 13, for Nos. 11 and 12 as originally enacted.

SCHEDULE I.—(continued). Act VII. of 1870.

Ad-valorem Fees.

NUMBER.		PROPER FEE.
		the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.
12. Certificate under the Succession Certificate Act, 1889.*	In any case...	Two per centum on the amount or value of any debt or security specified in the certificate under section 8 of the Act, and three per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act. NOTE.—(1) The amount of a debt is its amount, including interest, on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained. (2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act, and where such a power

* Nos. 11, 12, and 12A have been substituted, by the Succession Certificate Act (VII. of 1889), s. 13, for Nos. 11 and 12 as originally enacted.

Act VII. of 1870.

SCHEDULE I.—(continued).

Ad-valorem Fees.

NUMBER.		PROPER FEE.
		has been so conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of, the security, or for both purposes, the value of the security is its market-value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.
12A. Certificate under the Regulation of the Bombay Code No. VIII. of 1827.*	... ...	(*1*) As regards debts and securities, the same fee as would be payable in respect of a certificate under the Succession Certificate Act, 1889, or in respect of an extension of such a certificate, as the case may be, and (*2*) as regards other property in respect of which the certificate is granted, two *per centum* on so much of the amount or value of such property as exceeds one thousand rupees.

* Nos. 11, 12, and 12A have been substituted, by the Succession Certificate Act (VII. of 1889), s. 13, for Nos. 11 and 12 as originally enacted.

SCHEDULE I.—(continued). Act VII. of 1870.

Ad-valorem Fees.

NUMBER.		PROPER FEE.
13. Application to the Chief Court or the Court of the Financial Commissioner of the Punjáb for the exercise of its revisional jurisdiction under section 622 of the Code of Civil Procedure.*	When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees ...	Two rupees.
	When such amount or value exceeds twenty-five rupees	The fee leviable on a memorandum of appeal.

* This number has been added by the Punjáb Courts Act (XVIII. of 1884), s. 71.

Act VII. of 1870.

SCHEDULE I.—(continued).

Table of rates of ad-valorem fees leviable on the institution of suits.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A. P.
0	5	0 6 0
5	10	0 12 0
10	15	1 2 0
15	20	1 8 0
20	25	1 14 0
25	30	2 4 9
30	35	2 10 0
35	40	3 0 0
40	45	3 6 0
45	50	3 12 0
50	55	4 2 0
55	60	4 8 0
60	65	4 14 0
65	70	5 4 0
70	75	5 10 0
75	80	6 0 0
80	85	6 6 0
85	90	6 12 0
90	95	7 2 0
95	100	7 8 0
100	110	8 4 0
110	120	9 0 0
120	130	9 12 0
130	140	10 2 0
140	150	11 4 0
150	160	12 0 0
160	170	12 12 0
170	180	13 8 0
180	190	14 4 0
190	200	15 0 0
200	210	15 12 0
210	220	16 8 0
220	330	17 4 0
230	240	18 0 0
240	250	18 12 0
250	260	19 8 0
260	270	20 4 0
270	280	21 0 0
280	290	21 12 0
290	300	22 8 0
300	310	23 4 0
310	320	24 0 0
320	330	24 12 0
330	340	25 8 0
340	350	26 4 0
350	360	27 0 0
360	370	27 12 0
370	380	28 8 0
380	390	29 4 0

Act VII. of 1870.

SCHEDULE I.—(continued).

Table of rates of ad-valorem fees, &c.—(continued).

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.		
Rs.	Rs.	Rs.	A.	P.
390	400	30	0	0
400	410	30	12	0
410	420	31	8	0
420	430	32	4	0
430	440	33	0	0
440	450	33	12	0
450	460	34	8	0
460	470	35	4	0
470	480	36	0	0
480	490	36	12	0
490	500	37	8	0
500	510	38	4	0
510	520	39	0	0
520	530	39	12	0
530	540	40	8	0
540	550	41	4	0
550	560	42	0	0
560	570	42	12	0
570	580	43	8	0
580	590	44	4	0
590	600	45	0	0
600	610	45	12	0
610	620	46	8	0
620	630	47	4	0
630	640	48	0	0
640	650	48	12	0
650	660	49	8	0
660	670	50	4	0
670	680	51	0	0
680	690	51	12	0
690	700	52	8	0
700	710	53	4	0
710	720	54	0	0
720	730	54	12	0
730	740	55	8	0
740	750	56	4	0
750	760	57	0	0
760	770	57	12	0
770	780	58	8	0
780	790	59	4	0
790	800	60	0	0
800	810	60	12	0
810	820	61	8	0
820	830	62	4	0
830	840	63	0	0
840	850	63	12	0
850	860	64	8	0
860	870	65	4	0
870	880	66	0	0

Act VII. of 1870.

SCHEDULE I.—(continued).

Table of rates of ad-valorem fees, &c.—(continued).

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A. P.
880	890	66 12 0
890	900	67 8 0
900	910	68 4 0
910	920	69 0 0
920	930	69 12 0
930	940	70 8 0
940	950	71 4 0
950	960	72 0 0
960	970	72 12 0
970	980	73 8 0
980	990	74 4 0
990	1,000	75 0 0
1,000	1,100	80 0 0
1,100	1,200	85 0 0
1,200	1,300	90 0 0
1,300	1,400	95 0 0
1,400	1,500	100 0 0
1,500	1,600	105 0 0
1,600	1,700	110 0 0
1,700	1,800	115 0 0
1,800	1,900	120 0 0
1,900	2,000	125 0 0
2,000	2,100	130 0 0
2,100	2,200	135 0 0
2,200	2,300	140 0 0
2,300	2,400	145 0 0
2,400	2,500	150 0 0
2,500	2,600	155 0 0
2,600	2,700	160 0 0
2,700	2,800	165 0 0
2,800	2,900	170 0 0
2,900	3,000	175 0 0
3,000	3,100	180 0 0
3,100	3,200	185 0 0
3,200	3,300	190 0 0
3,300	3,400	195 0 0
3,400	3,500	200 0 0
3,500	3,600	205 0 0
3,600	3,700	210 0 0
3,700	3,800	215 0 0
3,800	3,900	220 0 0
3,900	4,000	225 0 0
4,000	4,100	230 0 0
4,100	4,200	235 0 0
4,200	4,300	240 0 0
4,300	4,400	245 0 0
4,400	4,500	250 0 0
4,500	4,600	255 0 0
4,600	4,700	260 0 0

SCHEDULE I.—(continued). Act VII. of 1870.

Table of rates of ad-valorem fees, &c.—(continued).

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A. P.
4,700	4,800	265 0 0
4,800	4,900	270 0 0
4,900	5,000	275 0 0
5,000	5,250	285 0 0
5,250	5,500	295 0 0
5,500	5,750	305 0 0
5,750	6,000	315 0 0
6,000	6,250	325 0 0
6,250	6,500	335 0 0
6,500	6,750	345 0 0
6,750	7,000	355 0 0
7,000	7,250	365 0 0
7,250	7,500	375 0 0
7,500	7,750	385 0 0
7,750	8,000	395 0 0
8,000	8,250	405 0 0
8,250	8,500	415 0 0
8,500	8,750	425 0 0
8,750	9,000	435 0 0
9,000	9,250	445 0 0
9,250	9,500	455 0 0
9,500	9,750	465 0 0
9,750	10,000	475 0 0
10,000	10,500	490 0 0
10,500	11,000	505 0 0
11,000	11,500	520 0 0
11,500	12,000	535 0 0
12,000	12,500	550 0 0
12,500	13,000	565 0 0
13,000	13,500	580 0 0
13,500	14,000	595 0 0
14,000	14,500	610 0 0
14,500	15,000	625 0 0
15,000	15,500	640 0 0
15,500	16,000	655 0 0
16,000	16,500	670 0 0
16,500	17,000	685 0 0
17,000	17,500	700 0 0
17,500	18,000	715 0 0
18,000	18,500	730 0 0
18,500	19,000	745 0 0
19,000	19,500	760 0 0
19,500	20,000	775 0 0
20,000	21,000	795 0 0
21,000	22,000	815 0 0
22,000	23,000	835 0 0
23,000	24,000	855 0 0
24,000	25,000	875 0 0
25,000	26,000	895 0 0

Act VII. of 1870.

SCHEDULE I.—(continued).

Table of rates of ad-valorem fees, &c.—(continued).

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A. P.
26,000	27,000	915 0 0
27,000	28,000	935 0 0
28,000	29,000	955 0 0
29,000	30,000	975 0 0
30,000	32,000	995 0 0
32,000	34,000	1,015 0 0
34,000	36,000	1,035 0 0
36,000	38,000	1,055 0 0
38,000	40,000	1,075 0 0
40,000	42,000	1,095 0 0
42,000	44,000	1,115 0 0
44,000	46,000	1,135 0 0
46,000	48,000	1,155 0 0
48,000	50,000	1,175 0 0
50,000	55,000	1,200 0 0
55,000	60,000	1,225 0 0
60,000	65,000	1,250 0 0
65,000	70,000	1,275 0 0
70,000	75,000	1,300 0 0
75,000	80,000	1,325 0 0
80,000	85,000	1,350 0 0
85,000	90,000	1,375 0 0
90,000	95,000	1,400 0 0
95,000	1,00,000	1,425 0 0
1,00,000	1,05,000	1,450 0 0
1,05,000	1,10,000	1,475 0 0
1,10,000	1,15,000	1,500 0 0
1,15 000	1,20,000	1,525 0 0
1,20,000	1,25,000	1,550 0 0
1,25,000	1,30,000	1,575 0 0
1,30,000	1,35,000	1,600 0 0
1,35,000	1,40,000	1,625 0 0
1,40,000	1,45,000	1,650 0 0
1,45,000	1,50,000	1,675 0 0
1,50,000	1,55,000	1,700 0 0
1,55,000	1,60,000	1,725 0 0
1,60,000	1,65,000	1,750 0 0
1,65,000	1,70,000	1,775 0 0
1,70,000	1,75,000	1,800 0 0
1,75,000	1,80,000	1,825 0 0
1,80,000	1,85,000	1,850 0 0
1,85,000	1,90,000	1,875 0 0
1,90,000	1,95,000	1,900 0 0
1,95,000	2,00,000	1,925 0 0
2,00,000	2,05,000	1,950 0 0
2,05,000	2,10,000	1,975 0 0
2,10,000	2,15,000	2,000 0 0
2,15,000	2,20,000	2,025 0 0
2,20,000	2,25,000	2,050 0 0

SCHEDULE I.—(concluded).

Table of rates of ad-valorem fees, &c.—(concluded).

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A. P.
2,25,000	2,30,000	2,075 0 0
2,30,000	2,35,000	2,100 0 0
2,35,000	2,40,000	2,125 0 0
2,40,000	2,45,000	2,150 0 0
2,45,000	2,50,000	2,175 0 0
2,50,000	2,55,000	2,200 0 0
2,55,000	2,60,000	2,225 0 0
2,60,000	2,65,000	2,250 0 0
2,65,000	2,70,000	2,275 0 0
2,70,000	2,75,000	2,300 0 0
2,75,000	2,80,000	2,325 0 0
2,80,000	2,85,000	2,350 0 0
2,85,000	2,90,000	2,375 0 0
2,90,000	2,95,000	2,400 0 0
2,95,000	3,00,000	2,425 0 0
3,00,000	3,05,000	2,450 0 0
3,05,000	3,10,000	2,475 0 0
3,10,000	3,15,000	2,500 0 0
3,15,000	3,20,000	2,525 0 0
3,20,000	3,25,000	2,550 0 0
3,25,000	3,30,000	2,575 0 0
3,30,000	3,35,000	2,600 0 0
3,35,000	3,40,000	2,625 0 0
3,40,000	3,45,000	2,650 0 0
3,45,000	3,50,000	2,675 0 0
3,50,000	3,55,000	2,700 0 0
3,55,000	3,60,000	2,725 0 0
3,60,000	3,65,000	2,750 0 0
3,65,000	3,70,000	2,775 0 0
3,70,000	3,75,000	2,800 0 0
3,75,000	3,80,000	2,825 0 0
3,80,000	3,85,000	2,850 0 0
3,85,000	3,90,000	2,875 0 0
3,90,000	3,95,000	2,900 0 0
3,95,000	4,00,000	2,925 0 0
4,00,000	4,05,000	2,950 0 0
4,05,000	4,10,000	2,975 0 0
4,10,000	.....	3,000 0 0

Act VII. of 1870.

SCHEDULE II.

Fixed Fees.

NUMBER.		PROPER FEE.
1. Application* or petition.	(*a*.)—When presented to any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings; or when presented to any officer of land-revenue by any person holding temporarily-settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement; or when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement; or when presented to any Civil Court† other than a principal Civil Court of original jurisdiction,‡ or to any Court of Small Causes constituted under Act No. XI. of 1865,§ or under Act No. XVI. of 1868,‖ section 20, or to a Collector or other officer of revenue in relation to any suit or case in which the amount or value of the subject-matter is less than fifty rupees; or when presented to any Civil, Criminal, or Revenue Court, or to any Board or Executive Officer for the purpose of obtaining a copy or translation of any judgment, decree, or order passed by such Court,	One anna.

* In writing, 2. N.-W. P. 418.

† 7 Bom. A. C. J. 109.

‡ Here the words, "or to any Cantonment Magistrate sitting as a Court of Civil Judicature under Act No. III. of 1859." have been repealed.—See Cantonments Act (XIII. of 1889), s. 2 and Sch.

§ Read Act IX. of 1887 from the 1st July 1887, when that Act, which repeals Act XI. of 1865, came into force.—See Act IX. of 1887, ss. 1 and 2.

‖ This Act was repealed by Act VI. of 1871. Read Act XII. of 1887 from the 1st July 1887, when that Act, which repeals Act VI. of 1871, came into force.—See Act XII. of 1887.

SCHEDULE II.—(continued).

Fixed Fees.

NUMBER.		PROPER FEE.
	Board, or officer, or of any other document* on record in such Court or Office.	One anna.
1. Application or petition (ctd.).	(*b.*)—When containing a complaint or charge of any offence other than an offence for which police-officers may, under the Code of Criminal Procedure, 1882,† arrest without warrant, and presented to any Criminal Court; or when presented to a Civil, Criminal, or Revenue Court, or to a Collector, or any revenue-officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise provided for by this Act; or to deposit in Court revenue or rent; or for determination by a Court of the amount of compensation to be paid by a landlord to his tenant.	Eight annas.
	(*c.*)—When presented to a Chief Commissioner or other chief controlling revenue or executive authority, or to a Commissioner of Revenue or Circuit, or to any chief officer charged with the executive administration of a Division, and not otherwise provided for by this Act	One rupee.
	(*d.*)—When presented to a High Court	Two rupees.
2. Application for leave to sue as a pauper	... ...	Eight annas.
3. Application for leave to appeal as a pauper	(*a.*)—When presented to a District Court...	One rupee.
	(*b.*)—When presented to a Commissioner or a High Court ...	Two rupees.

* 6 B. L. R., App., 137.
† See Act X. of 1882, s. 3.

Act VII. of 1870.

SCHEDULE II.—(continued).

Fixed Fees.

NUMBER.		PROPER FEE.
4. Plaint or memorandum of appeal in a suit to obtain possession under Act No. XVI. of 1838, or "the Mámlatdárs' Courts Act, 1876."*		
5. Plaint or memorandum of appeal in a suit to establish or disprove a right of occupancy.		
6. Bail-bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure, 1882, or the Code of Civil Procedure †		Eight annas.
7. Undertaking under section 49 of the Indian Divorce Act.		
8. [*Repealed by Act XII. of 1891.*]		
9. [*Repealed by Act XII. of 1891.*]		
10. Mukhtarnama or Vakalatnama.	When presented for the conduct of any one case—	
	(*a*)—to any Civil or Criminal Court other than a High Court, or to any Revenue Court, or to any Collector or Magistrate, or other executive officer, except such as are mentioned in clauses (*b*) and (*c*) of this Number	Eight annas.
	(*b*)—to a Commissioner of Revenue, Circuit, or Customs, or to any officer charged with the executive administration of a Division, not being the chief revenue or executive authority	One rupee.
	(*c*)—to a High Court, Chief Commissioner, Board of Revenue, or other chief controlling revenue or executive authority.	Two rupees.

* The words quoted have been substituted by Act XII. of 1891 for the words, "Bombay Act No. V. of 1864 (*to give Mámlatdárs' Courts jurisdiction in certain cases to maintain existing possession, or to restore possession to any party dispossessed otherwise than by course of law*)."

† As amended by the Probate and Administration Act (VI. of 1889), s. 18.

SCHEDULE II.—(continued). Act VII. of 1870.

Fixed Fees.

NUMBER.		PROPER FEE.
11. Memorandum of appeal when the appeal is not from an order rejecting a plaint, or from a decree or an order having the force of a decree, and is presented—	(*a*)—to any Civil Court other than a High Court, or to any Revenue Court, or executive officer other than the High Court, or chief controlling revenue or executive authority	Eight annas.
	(*b*)—to a High Court or Chief Commissioner, or other chief controlling executive or revenue authority	Two rupees.
12. Caveat. 13. Application under Act No. X. of 1859,* section 26, or Bengal Act No. VI. of 1862,† section 9, or Bengal Act No. VIII. of 1869,‡ section 7.§ 14. Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866. 15. Plaint or memorandum of appeal in a suit to obtain possession of a wife.	... ...	Five rupees.
16. [*Repealed by the Probate and Administration Act (VI. of 1889), s. 18.*]		
17. Plaint or memorandum of appeal in each of the following suits:— i. to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court: ii. to alter or cancel any entry in a register of the names of proprietors of revenue-paying estates: iii. to obtain a declaratory decree where no consequential relief is prayed: ‖ iv. to set aside an award: v. to set aside an adoption.	... ...	Ten rupees.

* As to the repeal of this Act in the Lower Provinces, see Act VIII. of 1885 and Ben. Act I. of 1879; in the North-Western Provinces, see Act XVIII. of 1873; in the Central Provinces, see Act IX. of 1883.

† As to the repeal of this Act, see Act VIII. of 1885 and Ben. Act I. of 1879.

‡ As to the repeal of this Act, see Act VIII. of 1885.

§ *Sic.* Read 37.

‖ See 8 B. L. R., App., 32.

Act VII. of 1870.

SCHEDULE II.—(concluded).

Fixed Fees.

NUMBER.		PROPER FEE.
vi. Every other suit where it is not possible to estimate at a money-value the subject-matter in dispute, and which is not otherwise provided for by this Act 18. Application under section 523* of the Code of Civil Procedure. 19. Agreement under section 527* of the same Code.	... ...	Ten rupees.
20. Every petition under the Indian Divorce Act,† except petitions under section 44 of the same Act, and every memorandum of appeal under section 55 of the same Act. 21. Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1865.‡	... ...	Twenty rupees.

* Act XIV. of 1882, s. 3.
† Act IV. of 1869.
‡ Act V. of 1865.

SCHEDULE III.

ENACTMENTS REPEALED.

[*Repealed by Act XIV. of 1870.*]

ACT VIII. OF 1870.*

Act VIII. of 1870.

RECEIVED THE G.-G.'S ASSENT ON THE 18TH MARCH 1870.

An Act for the prevention of the murder of Female Infants.

Preamble.

WHEREAS the murder of female infants is believed to be commonly committed in certain parts of British India; and whereas it is necessary to make better provision for the prevention of the said offence; It is hereby enacted as follows:—

Power to take measures under Act in particular districts.

1. If it shall appear to the Local Government that the said offence is commonly committed in any district, or by any class, or family, or persons residing therein, the Local Government may, with the previous sanction of the Governor-General of India in Council, declare, by notification published in the official Gazette, and in such other manner as the Local Government shall direct, that measures for the prevention of such offence shall be taken under this Act in such district, or in respect of such class, or family, or persons.

The notification shall define the limits of such district, or shall specify the class, or family, or persons to whom such notification is to be deemed to apply.

Power to make rules.

2. When such notification shall have been published as aforesaid, it shall be lawful for the Local Government, subject to the provisions of section 3, from time to time to make rules,† consistent with this Act, for all or any of the following purposes:—

(1.)—For making and maintaining registers of births, marriages, and deaths occurring in such district, or in or among the class, family, or persons to whom such notification has been made applicable; and for making, from time to time, a census of such persons or of any other persons residing within such district:

(2.)—For the entertainment of any police-force in excess of the ordinary fixed establishment of police, or for the entertainment of any officers or servants, for the purpose of preventing or detecting the murder of female infants in such district, or in or among such class, family, or persons, or for carrying out any of the provisions of this Act:

(3.)—For prescribing how and by whom information shall be given to the proper officers of all births, marriages, and deaths occurring or about to occur in such district, or in or among such class, family, or persons:

(4.)—For the regulation and limitation of expenses incurred by any person to whom such notification applies, on account of the celebration of marriage or of any ceremony or custom connected therewith:

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* Act VIII. of 1870 has been declared under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum.—See *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504.

† See the N.-W. P. Rules, *Gazette of India*, Feb. 11, 1871, p. 76; Oudh Rules, *ibid*, May 11, 1872, p. 523: Bombay Rules as to the Lewa and Karwa Kanbi Castes in the Ahmadabad and Kaira Districts, *Bombay Government Gazette*, Extraordinary, April 15, 1871, p. 453: Sep. 25, 1873, p. 786.

Act VIII. of 1870.

(5.)—For regulating the manner in which all or any of the expenses incurred in carrying into effect rules made under this section shall be recovered from all or any of the inhabitants of such district or from the persons to whom such notification is applicable:

(6.)—For defining the duties of any officer or servant appointed to carry out any rule made under this section.

Confirmation and publication of rules.

3. No rule or alteration made under section 2 shall take effect until it shall have been confirmed by the Governor-General of India in Council, and published in the *Gazette of India* and also in the local Gazette.

Copies of every such rule shall be affixed in such places, and shall be distributed in such manner, as the Local Government may direct.

Punishment for breach of rules.

4. Whoever disobeys any such rule shall, on conviction before any officer exercising the powers of a Magistrate, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Saving of prosecutions under other laws.

5. Nothing in this Act, or in any rule made and published as aforesaid, shall prevent any person from being prosecuted and punished under any other law for any offence punishable under this Act: Provided that no person shall be punished twice for the same offence.

Power to place neglected children under supervision.

6. If it appears to the Magistrate of the district that any person, to whom the notification mentioned in section 1 applies, neglects to make proper provision for the maintenance of any female child for whose maintenance he is legally responsible, and that the life or health of such child is thereby endangered, such Magistrate may, in his discretion, place the child under such supervision as he may think proper, and shall, if necessary, remove the child from the custody of such person.

The Magistrate of the district may order him to make a monthly allowance for the maintenance of the child at such monthly rate not exceeding fifty rupees as to such Magistrate shall seem reasonable; and, if such person wilfully neglects to comply with such order, such Magistrate may, for every breach of the order, by warrant direct the amount due to be levied in manner provided by sections 386 and 387* of the Code of Criminal Procedure.

Nothing in this section shall affect the powers of a Magistrate under section 488* of the same Code.

Extent of Act.

7. This Act shall, in the first instance, extend only to the North-Western Provinces, to the Punjab, and to Oudh; but the Governor-General of India in Council may, by order, extend it to any part of the territories (other than Oudh) under the immediate administration of the Government of India; and the Governor of Madras in Council, the Governor of Bombay in Council, and the Lieutenant-Governor of Bengal may severally, by order, extend it to any part of the territories under their respective Governments.

Every order under this section made by the Governor-General of India in Council shall be published in the *Gazette of India*. Every other order made under this section shall be published in the local official Gazette.

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* See Act X. of 1882, s. 3.

ACT X. OF 1870.*

Act X. of 1870.

THE LAND-ACQUISITION ACT.

RECEIVED THE G.-G.'s ASSENT ON THE 1ST APRIL 1870.

Repealed by Act XIV of 1879

An Act for the Acquisition of Land for Public Purposes and for Companies.

WHEREAS it is expedient to consolidate and amend the law for the acquisition of land needed for public purposes and for Companies, and for determining the amount of compensation to be made on account of such acquisition; It is hereby enacted as follows :—

Preamble.

PART I.

PRELIMINARY.

Short title. **1.** This Act may be called "The Land Acquisition Act, 1870:"

Local extent. It extends to the whole of British India :†

Commencement. And it shall come into force on the first day of June 1870.

Repeal of Acts. **2.** On and from such day Act No. VI. of 1857 (*for the acquisition of land for public purposes*), Act No. II. of 1861 (*to amend Act No. VI. of 1857*), and Act No. XXII. of 1863 (*to provide for taking land for works of public utility to be constructed by private persons or Companies, and for regulating the construction and use of works on land so taken*), shall be repealed.

All references made to any of the said Acts in subsequent Acts, orders, or contracts shall be read as if made to this Act.

Interpretation-clause. **3.**‡ In this Act—

The expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth:

The expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act :

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* See also the Land-acquisition (Mines) Act (XVIII. of 1885), which is to be read with, and taken as part of, this Act.

Act X. of 1870 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	See *Gazette of India* .	Oct. 21, 1881, Pt. I., p. 504.
The North-Western Provinces Tarái	Ditto .	Sep. 23, 1876, Pt. I., p. 505.

It is included in the Schedule to the Santál Parganas Laws Regulation, III. of 1886.

† It has also been applied to Mysore (8th June 1870), and the Haidarábád Assigned Districts (14th July 1870).

‡ So much of this section as declares the Commissioner of a Division to be a principal Civil Court of original jurisdiction in Oudh has been repealed by Act XIII. of 1879.

Act X. of 1870.

The expression "Collector" means the Collector of a District, and includes a Deputy Commissioner and any officer specially appointed by the Local Government to perform the functions of a Collector under this Act:

The expression "Court" means, in the Regulation Provinces, "the Panjáb,"* British Burma,† and Sindh, a principal Civil Court of original jurisdiction,

and in the Non-regulation Provinces other than "the Panjáb,"* British Burma,† and Sindh, the Court of a Commissioner of a Division,‡

unless, when the Local Government has appointed (as it is hereby empowered to do), either specially for any case, or generally within any specified local limits, a judicial officer to perform the functions of a Judge under this Act, and then the expression "Court" means the Court of such officer:

The expression "Company" means a Company registered under the Indian Companies Act, 1882,§ or formed in pursuance of an Act of Parliament or by Royal Charter or Letters Patent:

And the following persons shall be deemed persons "entitled to act" as and to the extent hereinafter provided (that is to say)—

trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any such case, and that to the same extent as the persons beneficially interested could have acted if free from disability:

a married woman, in cases to which the English Law is applicable, shall be deemed the person so entitled to act, and whether of full age or not, to the same extent as if she were unmarried and of full age; and

the guardians of minors and the committees of lunatics or idiots shall be deemed respectively the persons so entitled to act to the same extent as the minors, lunatics, or idiots themselves, if free from disability, could have acted.

PART II.

ACQUISITION.

Preliminary investigation.

Power to enter and survey.

4. Whenever it appears to the Local Government that land in any locality is likely to be needed for any public purpose, a notification to that effect shall be published in the local Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

Thereupon it shall be lawful for any officer either generally or specially authorized by such Government in this behalf, and for his servants and workmen,

to enter upon and survey and take levels of any land in such locality:

to dig or bore into the sub-soil:

to do all other acts necessary to ascertain whether the land is adapted for such purpose:

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* The words quoted have been added by the Panjáb Courts Act (XVIII. of 1884), s. 74.

† To be construed as referring to Lower Burma.—See Act XX. of 1886, s. 4.

‡ So much of s. 3 as declares the Commissioner of a Division to be a principal Civil Court of original jurisdiction in Oudh has been repealed by Act XIII. of 1879.—See s. 3 and Schedule.

§ See Act VI. of 1882, s. 2.

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon:

Power to mark out line.

to mark such levels, boundaries, and line by placing marks and cutting trenches;

and where otherwise the survey cannot be completed, and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Power to clear land.

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

Previous notice of entry.

5. The officer so authorized shall, at the time of such entry, pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector, and such decision shall be final.

Payment for damage.

Declaration of Intended Acquisition.

6. Subject to the provisions of Part VII. of this Act, whenever it appears to the Local Government that any particular land is needed for a public purpose or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government, or of some officer duly authorized to certify its orders:

Declaration that land is required for a public purpose.

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid out of public revenues, or out of some municipal fund, or by a Company.

The declaration shall be published in the local official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

Contents of declaration.

The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration, the Local Government may acquire the land in manner hereinafter appearing.

Declaration to be evidence.

7. Whenever any land shall have been so declared to be needed for a public purpose, or for a Company, the Local Government, or some officer authorized by the Local Government in this behalf, shall direct the Collector to take order for the acquisition of the land.

After declaration, Collector to take order for acquisition.

8. The Collector shall thereupon cause the land (unless it has been already marked out under section 4) to be marked out. He shall also cause it to be measured, and (if no plan has been made thereof) a plan to be made of the same.

Land to be marked out and measured.
Plan.

Act X. of 1870.

Notice to persons interested.

9. The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

Contents of notice.

Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests.

Notice to occupiers.

The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known, or believed to be interested therein, or to be entitled to act for persons so interested, as reside, or have agents authorized to receive service on their behalf, within the revenue-district in which the land is situate.

In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post.

Power to require statements as to names and interests.

10. The Collector may also require any such person to deliver to him a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant, or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for the year next preceding the date of the statement.

Persons required to make statements to be deemed legally bound to do so.

Every person required to make or deliver a statement under this section or section 9 shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code.

Enquiry into Value and Claims.

Enquiry into value and amount of compensation. Tender.

11. On the day so fixed, the Collector shall proceed to enquire summarily into the value of the land, and to determine the amount of compensation which, in his opinion, should be allowed therefor, and shall tender such amount to the persons interested who have attended in pursuance of the notice.

Power to summon witnesses.

For the purpose of such enquiry, the Collector shall have power to summon and enforce the attendance of witnesses, and to compel the production of documents by the same means and (as far as may be) in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure.*

Postponement of enquiry.

12. The Collector may, if no claimant attends pursuant to the notice, or if, for any other cause he thinks fit, from time to time postpone the enquiry to a day to be fixed by him.

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* See Act XIV. of 1882, s. 3.

13. In determining the amount of compensation, the Collector shall take into consideration the matters mentioned in section 24, and shall not take into consideration any of the matters mentioned in section 25. Act X. of 1870.

Matters to be considered and matters to be neglected.

Award by Collector.

14. If the Collector and the persons interested agree as to the amount of compensation to be allowed, the Collector shall make an award under his hand for the same.

Award in case of agreement as to compensation.

Such award shall be filed in the Collector's office, and shall be conclusive evidence, as between the Collector and the persons interested, of the value of the land and the amount of compensation allowed for the same.

Award to be filed and to be evidence.

15. When the Collector proceeds to make the enquiry as aforesaid, whether on the day originally fixed for the enquiry or on the day to which it may have been postponed,

Reference where no claimant attends, or if Collector and persons interested cannot agree.

if no claimant attends,

or if the Collector considers that further enquiry as to the nature of the claim ought to be made by the Court,

or if any person whom the Collector has reason to think interested does not attend,

or if the Collector is unable to agree with the persons interested who have attended in pursuance of the notice as to the amount of compensation to be allowed,

or if, upon the said enquiry, any question respecting the title to the land, or any rights thereto or interests therein, arise between or among two or more persons making conflicting claims in respect thereof,

the Collector shall refer the matter to the determination of the Court in manner hereinafter appearing.

Taking Possession.

16. When the Collector has made an award under section 14 or a reference to the Court under section 15, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.

Power to take possession.

17. In cases of urgency, whenever the Local Government so directs, the Collector (though no such reference has been directed or award made) may, on the expiration of fifteen days from the publication of the notice mentioned in the first paragraph of section 9, take possession of any waste or arable land needed for public purposes or for a Company.

Power to take possession in cases of urgency.

Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

The Collector shall offer to the persons interested compensation for the standing crops and trees (if any) on such land ; and in case such offer is not accepted, the value of such crops and trees shall be allowed for in awarding compensation for the land under the provisions herein contained.

Act X. of 1870.

PART III.

REFERENCE TO COURT AND PROCEDURE THEREON.

Collector's statement on reference to Court.

18. In making a reference under section 15, the Collector shall state for the information of the Court, in writing under his hand,

(*a*) the situation and extent of the land needed,

(*b*) the names of the persons whom he has reason to think interested in such land,

(*c*) the amount awarded for damages, and paid or tendered under sections 5 and 17, or either of them, the amount of compensation tendered for the land under section 11, or, if no claimant has attended pursuant to the notice mentioned in section 9, the amount of compensation which the Collector is willing to give to the persons interested, and

(*d*) the grounds on which the amount of compensation was determined.

Service of notice.

19. The Court shall thereupon cause to be served on each of the persons so named a notice requiring him (if he has not made a claim under section 9) to state to the Court, on or before a day to be therein mentioned, the sum which he claims as compensation for his interest in the land so needed.

The Court shall also cause a notice to be served on the Collector, and each of such persons, requiring them to appoint, on or before a day to be therein mentioned, two qualified assessors (one to be nominated by the Collector, and the other by the persons interested) for the purpose of aiding the Judge in determining the amount of the compensation.

If no claimant has attended pursuant to the notice mentioned in section 9, the Court shall cause to be affixed on some conspicuous place, on or near the land needed, a notice to the effect that, if the persons interested in such land do not, on or before a day to be therein mentioned, appear in Court and state the nature of their respective interests in the land and the amount and particulars of their claims to compensation, and nominate a qualified assessor, the Court will proceed to determine such amount.

Power to appoint an assessor.

20. In case of failure to nominate either of such assessors within the time so specified, the Judge shall himself appoint an assessor in his stead.

Determination of amount.

21. As soon as the assessors have been appointed, the Judge and the assessors shall proceed to determine the amount of the compensation.

Appointment of new assessor.

22. If, before such amount is determined, any of the assessors dies, or desires to be discharged, or refuses or neglects, or becomes incapable to act, the party by whom he was appointed may appoint some other qualified person to act in his place.

If the assessor so dying, or desiring to be discharged, or refusing, or neglecting, or becoming incapable, were appointed by the Judge,

or, in the case of an assessor appointed by either party, if for the space of seven days after notice from the Court for that purpose the party who appointed such assessor fails to appoint another,

the Judge shall appoint some other qualified person in his stead.

Powers of new assessor.

Every assessor so substituted shall have the same powers as were vested in the former assessor at the time of his so dying, or desiring to be discharged, or refusing, or neglecting, or becoming incapable.

Proceedings to be in open Court.

23. Every proceeding under section 21 shall take place in open Court, and all persons entitled to practise in any Civil Court shall be entitled to appear, plead, and act, or to appear and act (as the case may be), in such proceeding.

Matters to be considered in determining compensation.

24. In determining the amount of compensation to be awarded for land acquired under this Act, the Judge and assessors shall take into consideration—

First, the market-value, at the time of awarding compensation, of such land :

Secondly, the damage (if any) sustained by the person interested, at the time of awarding compensation, by reason of severing such land from his other land :

Thirdly, the damage (if any) sustained by the person interested, at the time of awarding compensation, by reason of the acquisition injuriously affecting his other property, whether moveable or immoveable, in any other manner, or his earnings ; and

Fourthly, if, in consequence of the acquisition, he is compelled to change his residence, the reasonable expenses (if any) incidental to such change.

Matters to be neglected in determining compensation.

25. But the Judge or assessors shall not take into consideration—

First, the degree of urgency which has led to the acquisition :

Secondly, any disinclination of the person interested to part with the land acquired :

Thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit :

Fourthly, any damage which, after the time of awarding compensation, is likely to be caused by or in consequence of the use to which the land acquired will be put :

Fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired :

Sixthly, any increase to the value of the other land of the person interested, likely to accrue from the use to which the land acquired will be put : or

Seventhly, any outlay or improvements on such land made, commenced, or effected with the intention of enhancing the compensation to be awarded therefor under this Act.

Rules as to amount of compensation.

26. Where the person interested has made a claim to compensation, pursuant to any notice mentioned in section 9 or in section 19, the amount awarded to him shall not exceed the amount so claimed, or be less than the amount tendered by the Collector under section 11.

Where the person interested has refused to make such claim, or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded may be less than, and shall in no case exceed, the amount so tendered.

Act X. of 1870.

Where the person interested has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him shall not be less than, and may exceed, the amount so tendered.

The provisions of this and the two preceding sections shall be read to every assessor, in a language which he understands, before he gives his opinion as to the amount of compensation to be awarded under this Act.

Record of assessors' opinions.

27. The opinion of each assessor shall be given orally, and shall be recorded in writing by the Judge.

Difference on questions of law.

28. In case of a difference of opinion between the Judge and the assessors, or any of them, upon a question of law or practice, or usage having the force of law, the opinion of the Judge shall prevail, and there shall be no appeal therefrom.

Agreement as to amount of compensation.

29. In case the Judge and one or both of the assessors agree as to the amount of compensation, their decision thereon shall be final.

Difference as to the amount of compensation.

30. In case of difference of opinion between the Judge and both of the assessors* as to the amount of compensation, the decision of the Judge shall prevail, subject to the appeal allowed under section 35.

Assessors' fees.

31. Every assessor appointed under this Act, not being an officer of Government, shall receive such fee for his services as the Judge shall direct, provided that such fee shall not exceed five hundred rupees.

Such fee shall be deemed to be costs in the proceeding.

Costs of proceedings taken by order of Court.

32. The costs of all proceedings taken under this Part by order of the Court shall, in the first instance, be paid by the Collector.

Party to pay costs.

33. Where the amount awarded does not exceed the sum tendered by the Collector, the costs of all proceedings under this Part shall be paid by the person interested.

Where the amount awarded exceeds the sum so tendered, such costs shall be paid by the Collector.

Awards to be in writing.

34. Every award made under this Part shall be in writing signed by the Judge and the assessors or assessor concurring therein, and shall specify the amount awarded under the first clause of section 24, and also the amounts (if any) respectively awarded under the second, third, and fourth clauses of the same section, together with the grounds of awarding each of the said amounts.

Award to state amount of costs.

It shall also state the amount of costs incurred in the proceedings under this Part, and by what persons and in what proportions they are to be paid.

Recovery of costs.

The costs (if any) payable by the person interested, and not deducted under section 42, may be recovered as if they were costs incurred in a suit, and as if the award were the decree therein.

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* Whether or not they agree with each other.—17th Suth. W. R. 225.

Appeal from Judge's decision as to compensation.

35. If the Judge differs from both the assessors as to the amount of compensation, he shall pronounce his decision, and the Collector or the person interested (as the case may be) may appeal therefrom to the Court of the District Judge,* unless the Judge whose decision is appealed from is the District Judge, or unless the amount which the Judge proposes to award exceeds five thousand rupees, in either of which cases the appeal shall lie to the High Court.

Every appeal under this section shall be presented within the time and in manner provided by the Code of Civil Procedure† for the regular appeals in suits.

Provisions of Code of Civil Procedure made applicable.

36. The following provisions of the Code of Civil Procedure† :—

(*a*) as to adding parties,

(*b*) as to adjournment,

(*c*) as to death, marriage, and bankruptcy or insolvency of parties,

(*d*) as to summoning witnesses and their attendance,

(*e*) as to examination of parties and witnesses,

(*f*) as to production of documents, and

(*g*) as to commissions to examine absent witnesses and to make local enquiries,

shall apply, so far as may be, to proceedings before the Court.

PART IV.

APPORTIONMENT OF COMPENSATION.

Particulars of apportionment to be specified.

37. Where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

Dispute as to apportionment.

38. When the amount of compensation has been settled under section 14, if any dispute arises as to the apportionment of the same or any part thereof, the Collector shall refer such dispute to the decision of the Court.

Determination of proportions.

39. When the amount of compensation has been settled by the Court, and there is any dispute as to the apportionment thereof, or when a reference to the Court has been made under section 38, the Judge sitting alone shall decide the proportions in which the persons interested are entitled to share in such amount.

An appeal shall lie from such decision to the High Court, unless the Judge whose decision is appealed from is not the District Judge, in which case the appeal shall lie in the first instance to the District Judge.

Every appeal under this section shall be presented within the time and in manner provided‡ for regular appeals in suits.

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* Includes the High Court in the exercise of its appellate jurisdiction.—13 B. L. R. 189.

† See Act XIV. of 1882, s. 3.

‡ Certain words, which were repealed by Act XII. of 1876, have been omitted.

Act X. of 1870.

PART V.

PAYMENT.

Payment of compensation to whom made.

40. Payment of the compensation shall be made by the Collector according to the award to the persons named therein, or, in the case of an appeal under section 39, according to the decision on such appeal:

Proviso.

Provided that nothing herein contained shall affect the liability of any person who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

Payment on making award by Collector.

41. When the amount of the compensation has been settled under section 14, if the persons interested shall so desire, the Collector shall, on the making of the same award, pay the amount of such compensation, and take possession of the land:

Provided that, in any case where immediate possession is not required, he may allow the occupants (if any) of the land to remain in occupation of the same, upon such terms as he and they may agree on, until possession of the land is required.

Percentage on market-value.

42. In addition to the amount of any compensation awarded under Part II. or Part III. of this Act, the Collector shall, in consideration of the compulsory nature of the acquisition, pay fifteen per centum on the market-value mentioned in section 24.

Payment with interest.

When the amount of such compensation is not paid on taking possession, the Collector shall pay the amount awarded and the said percentage with interest on such amount and percentage at the rate of six per centum per annum from the time of so taking possession:

Provided that the costs (if any) payable to the Collector by the person interested shall be deducted from such amount and percentage:

Time of payment in appealable cases.

Provided that, in cases where the decision of the Court under Part III. or Part IV. of this Act is liable to appeal, the Collector shall not pay the amount of compensation or the percentage, or any part thereof, until the time for appealing against such decision has expired, and no appeal shall have been presented against such decision, or until any such appeal shall have been disposed of.

PART VI.

TEMPORARY OCCUPATION OF LAND.

Temporary occupation of waste or arable land.

43. Subject to the provisions of Part VII. of this Act, whenever it appears to the Local Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a Company, the Local Government may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding three years from the commencement of such occupation.

The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments, as shall be agreed upon in writing between him and such persons respectively.

Difference as to compensation.

In case the Collector and the persons interested differ as to the sufficiency of the compensation, the Collector shall refer such difference for the final order of the Court.

Power to enter and take possession.

44. On payment of such compensation,

or on executing such agreement,

or on making a reference under section 43,

the Collector may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.

Restoration of land taken.

And, on the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein:

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and, if the persons interested shall so require, the Local Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a Company.

Difference as to condition of land.

45. In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference for the final order of the Court, and on such reference, or on a reference under section 43, the Judge sitting alone shall decide the difference referred.

PART VII.

ACQUISITION OF LAND FOR COMPANIES. *

Company may be authorized to enter and survey.

46. Subject to such rules as the Governor-General of India in Council may, from time to time, prescribe in this behalf, the Local Government may authorize any officer of any Company desiring to acquire land for its purposes to exercise the powers conferred by section 4.

Construction of sections 4 and 5.

In every such case section 4 shall be construed as if, for the words "for such purpose," the words "for the purposes of the Company" were substituted, and section 5 shall be construed as if, after the words "the officer," the words "of the Company" were inserted.

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* As to acquisition of land for the purposes of a tramway, of which the promoter is not a Company, as it might be acquired for the purposes of the tramway if a Company were the promoter, see Act XI. of 1886, s. 7, sub-s. 3.

Act X. of 1870.

Consent of Local Government to acquisition. Execution of agreement.

47. The provisions of section 6 to section 45 (both inclusive) shall not be put in force in order to acquire land for any Company, unless with the previous consent of the Local Government, and unless the Company shall have executed the agreement hereinafter mentioned.

Previous enquiry.

48. Such consent shall not be given unless the Local Government be satisfied, by an enquiry held as hereinafter provided—

(1) that such acquisition is needed for the construction of some work, and

(2) that such work is likely to prove useful to the public.

Such enquiry shall be held by such officer and at such time and place as the Local Government shall appoint.

Such officer may summon and enforce the attendance of witnesses, and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure* in the case of a Civil Court.

Agreement with Secretary of State in Council.

49. Such officer shall report to the Local Government the result of the enquiry, and, if the Local Government is satisfied that the proposed acquisition is needed for the construction of a work, and that such work is likely to prove useful to the public, it shall, subject to such rules as the Governor-General of India in Council may from time to time prescribe in this behalf, require the Company to enter into an agreement with the Secretary of State for India in Council, providing to the satisfaction of the Local Government for the following matters, namely :—

(1.) The payment to Government of the cost of the acquisition :

(2.) The transfer, on such payment, of the land to the Company :

(3.) The terms on which the land shall be held by the Company :

(4.) The time within which, and the conditions on which, the work shall be executed and maintained ; and

(5.) The terms on which the public shall be entitled to use the work.

Publication of agreement.

50. Every such agreement shall, as soon as may be after its execution, be published in the *Gazette of India*, and also in the local official Gazette, and shall thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act.

PART VIII.

MISCELLANEOUS.

Service of notice.

51. Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under section 4, by the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector or the Judge.

Whenever it may be practicable, the service of the notice shall be made on the person therein named.

* See Act XIV. of 1882, s. 3.

When such person cannot be found, the service may be made on any adult male member of his family residing with him; and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business. Act X. of 1870.

Obstruction to survey, &c. Filling trenches. Destroying landmarks.

52. Whoever wilfully obstructs any person in doing any of the acts authorized by section 4 or section 8, or wilfully fills up, destroys, damages, or displaces any trench or mark made under section 4, shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding one month, or to fine not exceeding 50 rupees, or to both.

Magistrate to enforce surrender.

53. If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and, if not a Magistrate, he shall apply to a Magistrate or (within the towns of Calcutta, Madras, and Bombay) to the Commissioner of Police, and such Magistrate or Commissioner (as the case may be) shall enforce the surrender of the land to the Collector.

Government not bound to complete acquisition.

54. Except in the case provided for in section 44, nothing in this Act shall be taken to compel the Government to complete the acquisition of any land unless an award shall have been made or a reference directed under the provisions hereinbefore contained.

Compensation when acquisition is not completed.

But, whenever the Government declines to complete any such acquisition, the Collector shall determine the amount of compensation due for the damage (if any) done to such land under section 4 or section 8, and not already paid for under section 5, and shall pay such amount to the person injured.

Part of house or building not to be taken.

55. The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory, or other building, if the owner desire that the whole of such house, manufactory, or building shall be so acquired.*

Payment of Collector's charges by Municipal Body or Company.

56. Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any Municipal Fund or of any Company, the charges incurred by the Collector in such acquisition shall be defrayed from or by such Fund or Company.

Exemption from stamp-duty and fees.

57. No award or agreement made under this Act shall be chargeable with stamp-duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

Bar of suits to set aside awards under Act.

58. No suit shall be brought to set aside an award under this Act.

Limitation of suits for anything done in pursuance of Act.

And no suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended proceeding,

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* See 5 Bom. H. C. R., O. C. J., 98, a decision on the corresponding section of Act VI. of 1857.

Act XXI. of 1870.

and of the cause thereof, nor after tender of sufficient amends, nor after the expiration of three months from the accrual of the cause of suit or other proceeding.*

Power to make rules.

59. The Local Government shall have power to make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement, and may, from time to time, alter and add to the rules so made.

Publication of rules.

All such rules, alterations, and additions shall, when sanctioned by the Governor-General in Council, be published in the local official Gazette, and shall thereupon have the force of law.†

ACT XXI. OF 1870.‡

HINDU WILLS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 19TH JULY 1870.

An Act to regulate the Wills of Hindus, Jainas, Sikhs, and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay.

Preamble.

WHEREAS it is expedient to provide rules for the execution, attestation, revocation, revival, interpretation, and probate of the wills of Hindus, Jainas, Sikhs, and Buddhists in the territories subject to the Lieutenant-Governor of Bengal and in the towns of Madras and Bombay; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Hindu Wills Act, 1870."

Certain portions of Act X. of 1865 extended to wills of Hindus, Jainas, Sikhs, and Buddhists.

2. The following portions of the Indian Succession Act, 1865, namely,—

sections 46, 48, 49, 50, 51, 55, and 57 to 77 (both inclusive),
sections 82, 83, 85, 88 to 103 (both inclusive),
sections 106 to 177 (both inclusive),§ and
section 187,‖

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* Repealed, so far as it relates to the limitation of suits, by Act IX. of 1871, s. 2.

† See the Bengal Rules, *Calcutta Gazette*, 7th July 1875, p. 818: Bombay Rules, *Bombay Government Gazette*, 13th March 1873, p. 226: North-Western Provinces Rules, *North-Western Provinces Gazette*, 18th December 1875, p. 1744.

‡ Act XXI. of 1870 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum.—See *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504.

It is included in the Schedule to the Santál Parganas Laws Regulation, III. of 1886.

§ See Act V. of 1881, s. 154.

‖ This clause has been inserted by the Probate and Administration Act (V. of 1881), s. 154, in lieu of the following clauses:—

"sections 179 to 189 (both inclusive),

"sections 191 to 199 (both inclusive),

"so much of Parts XXX. and XXXI. as relates to grants of probate and letters of administration with the will annexed, and

"Parts XXXIII. to XL. (both inclusive), so far as they relate to an executor and an administrator with the will annexed."

shall, notwithstanding anything contained in section 331 of the said Act, apply— Act XXI. of 1870.

Extent of Act.

(*a*) to all wills and codicils made by any Hindu, Jaina, Sikh, or Buddhist, on or after the first day of September one thousand eight hundred and seventy, within the said territories or the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(*b*) to all such wills and codicils made outside those territories and limits, so far as relates to immoveable property situated within those territories or limits:

Provisos.

3. Provided that marriage shall not revoke any such will or codicil:

And that nothing herein contained shall authorize a testator to bequeath property which he could not have alienated *inter vivos*, or to deprive any persons of any right of maintenance of which, but for section 2 of this Act, he could not deprive them by will:*

And that nothing herein contained shall affect any law of adoption or intestate succession:

And that nothing herein contained shall authorize any Hindu, Jaina, Sikh, or Buddhist to create in property any interest which he could not have created before the first day of September one thousand eight hundred and seventy.

Partial repeal of Bengal Regulation V. of 1799, section 2.

4. On and from that day, section 2 of Bengal Regulation V. of 1799 shall be repealed so far as relates to the executors of persons who are not Muhammadans, but are subject to the jurisdiction of a District Court in the territories subject to the Lieutenant-Governor of Bengal.

Saving of rights of Administrator-General.

5. Nothing contained in this Act shall affect the rights, duties, and privileges of the Administrators-General of Bengal, Madras, and Bombay, respectively.†

Interpretation-clause.

6. In this Act and in the said sections‡ of the Indian Succession Act, all words defined in section 3 of the same Act shall, unless there be something repugnant in the subject or context, be deemed to have the same meaning as the said section 3 has attached to such words respectively:

And in applying sections 62, 63, 92, 96, 98, 99, 100, 101, 102,§ and 103 of the said Succession Act, to wills and codicils made under this Act, the words "son," "sons," "child," and "children" shall be deemed to include an adopted child; and the word "grandchildren" shall be deemed to include the children, whether adopted or natural-born, of a child, whether adopted or natural-born; and the expression "daughter-in-law" shall be deemed to include the wife of an adopted son.*

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* A clause following this, which was repealed by Act V. of 1881, s. 154, has been omitted.

† See Act II. of 1874.

‡ In s. 6, the words "and Parts" have here been omitted, having been repealed by Act XII. of 1891.

§ See Act V. of 1881, s. 154.

Act XXIII. of 1870.

ACT XXIII. OF 1870.*

RECEIVED THE G.-G.'S ASSENT ON THE 6TH SEPTEMBER 1870.

An Act to consolidate and amend the law relating to Coinage and the Mint.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to coinage and the mint; It is hereby enacted as follows:—

I.—Preliminary.

Short title.

1. This Act may be called "The Indian Coinage Act, 1870."

2. [*Repealed by Act XII. of 1873.*]

Interpretation-clause.

3. In this Act, the expression 'mint' includes the mints at Calcutta, at Bombay, and at such other places (if any) as the Governor-General in Council, by notification in the *Gazette of India*, from time to time directs;

the expression 'mint-rules' means such rules as the Governor-General in Council from time to time prescribes for the management of the mint;

and the expression 'remedy' means variation from the standard weight and fineness.

II.—Gold Coinage.

Gold coins.

4. The under-mentioned gold coins only shall be coined at the mint:—

(1.)—A gold mohur or fifteen-rupee piece.

(2.)—A five-rupee piece equal to a third of a gold mohur.

(3.)—A ten rupee piece equal to two-thirds of a gold mohur.

(4.)—A thirty-rupee piece or a double gold mohur.

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* Act XXIII. of 1870 has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886.

It is included in the Schedule to the Santál Parganas Laws Regulation, III. of 1886.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	See *Gazette of India*.	Oct. 22, 1881, Pt. I., p. 504.
The Jhánsi Division	Ditto	Aug. 31, 1878, Pt. I., p. 546.
The scheduled portion of the Mirzápur District	Ditto	May 31, 1879, Pt. I., p. 383.
Jaunsar Báwar	Ditto	May 31, 1879, Pt. I., p. 382.
Coorg	Ditto	Dec. 28, 1878, Pt. I., p. 747.
Ajmere-Merwára	Ditto	June 22, 1878, Pt. I., p. 380.

It has been extended, under the same Act, to the Scheduled Districts of Kumáon and Garhwál.—See *Gazette of India*, Nov. 4, 1876, Pt. I., p. 606.

The Act applies to coin made, and bullion brought for coinage to the mint, under the Portuguese Convention of 1880.—See Act XVII. of 1881, s. 3.

5. The standard weight of the said gold mohur shall be one hundred and eighty grains Troy, and its standard fineness shall be as follows :—eleven-twelfths, or one hundred and sixty-five grains, of fine gold, and one-twelfth, or fifteen grains, of alloy.

Their standard weight and fineness.

The other gold coins shall be of proportionate weight and of the same fineness :

Provided that, in the making of gold coins, a remedy shall be allowed of an amount not exceeding two thousandths in weight and two thousandths in fineness.

Remedy allowed.

III.—Silver Coinage.

6. The under-mentioned silver coins only shall be coined at the mint :—

Silver coins.

(1.)—A rupee to be called the Government rupee.

(2.)—A half rupee.

(3.)—A quarter rupee, or four-anna piece.

(4.)—An eighth of a rupee, or two-anna piece.

7. The standard weight of the Government rupee shall be one hundred and eighty grains Troy, and its standard fineness shall be as follows :—eleven-twelfths, or one hundred and sixty-five grains, of fine silver, and one-twelfth, or fifteen grains, of alloy.

Their standard weight and fineness.

The other silver coins shall be of proportionate weight and of the same fineness :

Provided that, in the making of silver coins, a remedy shall be allowed of an amount not exceeding the following :—

Remedy allowed.

	Remedy in weight.	Remedy in fineness.
Rupee	Five thousandths.	Two thousandths.
Half rupee		
Quarter rupee	Seven thousandths	Three thousandths.
Eighth of a rupee	Ten thousandths	

IV.—Copper Coinage.

8. The under-mentioned copper coins only shall be coined at the mint :—

Copper coinage.

(1.)—A double pice, or half anna.

(2.)—A pice, or quarter anna.

(3.)—A half pice, or one-eighth of an anna.

(4.)—A pie, being one-third of a pice, or one-twelfth of an anna.

9. The weight of the double pice shall be two hundred grains Troy.

Their weight.

The other copper coins shall be of proportionate weight :

Act XXIII. of 1870.

Remedy allowed.

Provided that, in the making of copper coins, a remedy shall be allowed of an amount not exceeding one-fortieth in weight.

V.—Devices on Coins.

Present devices on coins.

10. Until the Governor-General in Council otherwise orders under the power hereinafter conferred, the coins coined under this Act shall bear on the obverse the likeness of Her Majesty Queen Victoria, and the inscription "Victoria Queen," and on the reverse the designation of the coins in English filled by the word "India" with such date and embellishments on each coin as the Governor-General in Council from time to time determines.

Power to order other devices.

11. The Governor-General in Council may from time to time, by notification in the *Gazette of India*, direct the coining and issuing of all coins authorized by this Act, and prescribe, in lieu of the likeness and inscription hereinbefore mentioned, such other likeness and inscription for all or any of the said coins as he thinks fit.

VI.—Legal Tender.

Gold coin not a legal tender.

12. No gold coin shall be a legal tender in payment or on account.

Rupees and half rupees a legal tender.

13. The said rupee and half rupee shall be a legal tender in payment or on account :

Provided that the coin has not lost more than two per cent. in weight :

Provided also that it has not been clipped or filed, or defaced or diminished, otherwise than by use.

Four-anna and two-anna pieces.

The quarter rupee and eighth of a rupee shall be legal tender only for the fractions of a rupee, subject to the second proviso contained in this section.

Copper coin when a legal tender.

14. The double pice shall be a legal tender for the thirty-second part of a rupee or for half an anna ;

the pice for the sixty-fourth part of a rupee or for one-fourth of an anna ;

the half pice for the one hundred and twenty-eighth part of a rupee or for one-eighth of an anna ;

and the pie for the hundred and ninety-second part of a rupee or for one-twelfth of an anna :

Provided that none of the said copper coins shall be a legal tender, except for the fractions of a rupee.

Coin made under former Acts.

15. All silver coin of the weight and standard specified in the Acts No. XVII. of 1835,* No. XXI. of 1838,† and No. XIII. of 1862,* issued since the passing of those Acts, respectively, and declared by those Acts, respectively, to be a legal tender,

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* Repealed by this Act, s. 2. † Repealed by Act XIII. of 1862.

and all copper coins of the weight specified in Acts No. XXI. of 1835, No. XXII. of 1844,* and No. XIII. of 1862,† issued since the passing of those Acts, respectively, and declared by those Acts, respectively, to be a legal tender,

shall continue to be a legal tender for the amounts thereof, respectively, subject to the same conditions and provisions as under those Acts, respectively, anything contained in this Act or in any Act hereby repealed notwithstanding.

VII.—Diminished, Counterfeit, and Called-in Coin.

Cutting certain silver coins.

16. When any silver coin purporting to be coined and issued under the authority of the Government of India is tendered to any officer authorized by the Governor-General in Council or the Local Government to act under this section, who has reason to believe it to have lost, by reasonable wearing, more than two per cent. in weight,

or to be counterfeit,

or to have been reduced in weight otherwise than by reasonable wearing,

or to be called-in by any proclamation,

he may by himself or another,

(subject to the rules which the Governor-General in Council prescribes in this behalf),

cut or break such coin.

Return of cut coin.

17. If any coin so cut or broken is counterfeit, or has been reduced in weight otherwise than by reasonable wearing, the pieces shall be returned to the person tendering the coin, and he shall bear the loss caused by such cutting or breaking.

Receipt of cut coin.

But if it has been coined and issued by the authority of the Government of India, and has lost by reasonable wearing more than two per cent. in weight, or has been called in by any proclamation, the officer cutting or breaking the same shall receive it at the rate of one rupee per tola.

Bar of suits for acts done *bonâ fide*.

18.‡ No suit or other proceeding shall be maintained against any person in respect of anything done by him *bonâ fide* pursuant to this Act.

19 to **26**. [*Repealed by Act VIII. of 1893.*]

IX.—Power to make Rules.

Rules as to officers and management of the mint.

27. The Governor-General in Council may from time to time—

(1) fix the number and duties of the officers of, and persons employed in, the mint;

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* Repealed by Act XIII. of 1862.

† Repealed by this Act, s. 2.

‡ Paragraph I. of s. 18, being repealed by Act XII. of 1876, has been omitted.

Act XXIII. of 1870.

(2) make rules and give directions (subject to the provisions of this Act, and any notification made thereunder) respecting the management of the mint, and revoke and alter such rules and directions.*

Rules by notification.

28. The Governor-General in Council may also, from time to time, by notification in the *Gazette of India*,—

(1) diminish the amount of remedy allowed by sections five, seven, and nine in the case of any coin :

(2) determine in the case of any coin the date and embellishments to be put thereon :

(3) call-in coins of any date or denomination, or any coins coined before the date in the notification mentioned :

(4) prescribe rules for the guidance of officers authorized to cut or break coin under section sixteen :

(5) prescribe the charge to be made on account of the loss and expense of refining :

(6) determine the period for which certificates granted under section twenty-four shall run :

(7) fix the fee payable under section twenty-five :

(8) establish a mint at any place in British India, other than Calcutta and Bombay :

(9) abolish any mint so established or any mint now existing in British India :

(10) regulate any matters relative to coinage and to the mint, which are not provided for by this Act :

(11) revoke or alter any notification previously made under this Act.

Every such notification shall come into force on the day therein in that behalf mentioned, and shall have effect as if it were enacted in this Act.

SCHEDULE.

ENACTMENTS REPEALED.

[Repealed by Act XII. of 1873.]

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* For rules for receipt of bullion and coin in the Calcutta Mint and bye-laws of the Mint bullion depôt, see *Gazette of India*, July 19. 1873, p. 647.

ACT XXIV. OF 1870.

Act XXIV. of 1870.

THE OUDH TALUQDARS' RELIEF ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 7TH SEPTEMBER 1870.

An Act to relieve from incumbrances the estates of Taluqdárs in Oudh.

WHEREAS many of the taluqdárs of Oudh are in debt, and their immoveable property is subject to mortgages, charges, and liens; and whereas it is expedient to provide for their relief in manner hereinafter appearing; It is hereby enacted as follows:—

Preamble.

I.—PRELIMINARY.

Short title.

1. This Act may be called "The Oudh Taluqdars' Relief Act."

Interpretation-clause.

2. In this Act—

'Chief Commissioner' means the Chief Commissioner of Oudh:

'taluqdár' means a person whose name is entered in the first of the lists mentioned in the Oudh Estates' Act, 1869, section eight:

'heir' means the person for the time being entitled under the same Ac as heir to a taluqdár.

II.—VESTING ORDER.

Power to vest management of taluqdár's property in officer appointed by Chief Commissioner.

3. Whenever, within twelve months after the passing of this Act, any taluqdár,

or (when such taluqdár is an infant, or of unsound mind, or an idiot) his guardian, committee, or other legal curator,

or the person who would be heir to such taluqdár if he died intestate,

or (when such person is an infant, or of unsound mind, or an idiot) his guardian, committee, or other legal curator,

applies in writing to the Chief Commissioner, stating that the taluqdár is subject to, or that his immoveable property is charged with, debts or liabilities other than debts due, or liabilities incurred, to Government, and requesting that the provisions of this Act be applied to his case,

the Chief Commissioner may, with the previous consent of the Governor-General of India in Council, by order published in the local official Gazette, appoint an officer (hereinafter called the manager), and vest in him the management of the immoveable property of or to which the taluqdár is then possessed or entitled in his own right, or which he is entitled to redeem, or which may be acquired by or devolve on the taluqdár or his heir during the continuance of such management.

Effect of order.

4. On such publication, the following consequences shall ensue:—

Bar of suits against taluqdár.

first, all proceedings in respect to such debts or liabilities which may then be pending in any Civil Court in British India, shall be barred; and all processes, executions, and attachments for or in respect of such debts and liabilities, shall become null and void;

Taluqdár freed from arrest,

secondly, so long as such management continues,

Act XXIV. of 1870.

the taluqdár and his heir shall not be liable to arrest for or in respect of the debts and liabilities to which the taluqdár was immediately before the said publication subject, or with which his immoveable property or any part thereof was then charged, other than debts due, or liabilities incurred, to Government;

and his moveable property from attachment for prior debts.

nor shall their moveable property be liable to attachment or sale, under process of any Civil Court in British India, for or in respect of such debts and liabilities other than as aforesaid; and

Cessation of his power to alienate.

thirdly, so long as such management continues,

(*a*) the taluqdár and his heir shall be incompetent to mortgage, charge, lease, or alienate their immoveable property or any part thereof, or to grant valid receipts for the rents and profits arising or accruing therefrom,

Immoveable property freed from attachment.

and (*b*) such property shall be exempt from attachment or sale under such process as aforesaid, except for or in respect of debts due, or liabilities incurred, to Government.

III.—Duties of Manager.

Manager to receive rents and profits,

5. The manager shall, during his management of the said property, receive and recover all rents and profits due in respect thereof; and shall, upon receiving such rents and profits, give receipts for the same.

From the sums so received, he shall pay—

and pay therefrom Government demand,

first, the Government revenue, and all debts or liabilities for the time being due or incurred to Government in respect of the said property:

annual sum for maintenance of taluqdár and his heir.

secondly, such annual sum as appears to the Chief Commissioner requisite for the maintenance of the taluqdár, his heir, and their families:

costs of repairs and improvements,

Thirdly, the costs of such repairs and improvements of the property as appear necessary to the manager, and are approved by the Chief Commissioner:

costs of management,

and the residue shall be applied in discharge of the costs of the management, and in settlement of such debts and liabilities of the taluqdár and his heir and their immoveable property, as may be established under the provisions hereinafter contained.

and debts and liabilities.

IV.—Settlement of Debts.

Notice to claimants against taluqdár.

6. On the publication of the order vesting in him the management of the said property, the manager shall publish in the local official Gazette a notice in English and Urdu, calling upon all persons having claims against the taluqdár or his immoveable property to notify the same in writing to such manager within three months from the date of the publication.

Copies of notice to be exhibited.

He shall also cause copies of such notice to be exhibited at the tahsildárs' kachahrís in the district or districts in which the said property lies, and at such other places as the manager thinks fit.

Claim to contain full particulars.

7. Every such claimant shall, along with his claim, present full particulars thereof.

Every document on which the claimant founds his claim, or on which he relies in support thereof, shall be delivered to the manager along with the claim.

Documents to be given up.

If the document be an entry in any book, the claimant shall produce the book to the manager, together with a copy of the entry on which he relies. The manager shall mark the book for the purpose of identification, and, after examining and comparing the copy with the original, shall return the book to the claimant.

Entries in books.

If any document in the possession or under the control of the claimant is not delivered or produced by him to the manager along with the claim, the manager may refuse to receive such document in evidence on the claimant's behalf at the investigation of the case.

Exclusion of documents not produced.

8. Every debt or liability (other than debts due, or liabilities incurred, to Government) to which the taluqdár is subject, or with which his immoveable property or any part thereof is charged, and which is not duly notified to the manager within the time and in manner hereinbefore mentioned, shall be barred:

Debt or liability, not duly notified, to be barred.

Provided that, when proof is made to the manager that the claimant was unable to comply with the provisions of sections 6 and 7, the manager may admit such claim within the further period of nine months from the expiration of the said period of three months.

Provision for admission of claim within further period of nine months.

9. The manager shall, in accordance with the rules to be made under this Act, determine the amount of the debts and liabilities due to the several creditors of the taluqdár and persons holding mortgages, charges, or liens on the said property or any part thereof.

Determination of debts and liabilities.

10. An appeal against any refusal, admission, or determination under section 7, 8, or 9, shall lie, if preferred within six weeks from the date of such determination, to the Commissioner of Division to whom the manager is subordinate, and the decision of such Commissioner, or of the manager, if no such appeal has been so preferred, shall be final.

Appeal.

11. When the total amount of such debts and liabilities has been finally determined, the manager shall prepare and submit to the Chief Commissioner a schedule of such debts and liabilities, and a scheme for the settlement thereof; and such scheme, when approved by the Chief Commissioner, shall be carried into effect.

Scheme for settlement of debts and liabilities.

Until such approval is given, the Chief Commissioner may, as often as he thinks fit, send back such scheme to the manager for revision, and direct him to make such further enquiry as may be requisite for the proper preparation of the scheme.

Power to return scheme for revision.

12. When all such debts and liabilities have been discharged,

or if, within six months after the publication of the order mentioned in section 3, the Chief Commissioner thinks that the provisions of this Act should not continue to apply to the case of the taluqdár or his heir,

Restoration of taluqdár to property.

Act XXIV. of 1870.

the taluqdár or his heir shall be restored to the possession and enjoyment of his immoveable property, or of such part thereof as has not been sold by the manager under the power contained in section 19, but subject to the leases and mortgages (if any) granted and made by the manager under the powers hereinafter contained.

Where the taluqdár or his heir is so restored under the circumstances mentioned in the second clause of this section, the proceedings, processes, executions, and attachments mentioned in section 4* (so far as they relate to debts and liabilities not settled by the manager), and the debts and liabilities barred by section 8, shall be revived, and any mortgagee dispossessed under section 17 shall be reinstated, unless his claim under the mortgage has been satisfied ;

Revival of barred proceedings and debts.

and in calculating the periods of limitation applicable to such revived proceedings, and to suits to recover and enforce such revived debts and liabilities, the time intervening between such restoration and the publication of the order mentioned in section 3 shall be excluded.

V.—Powers of Manager.

13. The manager may, from time to time, call for further and more detailed particulars of any claim preferred before him under this Act, and may, at his discretion, refuse to proceed with the investigation of the claim until such particulars are supplied.

Power to call for further particulars.

14. For the purposes of this Act, the manager may summon and enforce the attendance of witnesses, and compel them to give evidence, and compel the production of documents by the same means, and, as far as possible, in the same manner, as is provided in the case of a Civil Court by the Code of Civil Procedure.†

Power to summon witnesses, and compel production of documents.

15. The manager may administer an oath in such form as he thinks fit to any person examined before him touching the matters to be enquired into under this Act.

Power to administer oaths.

16. Every investigation conducted by the manager with reference to any claim preferred before him under this Act, or to any matter connected with any such claim, shall be taken to be a judicial proceeding within the meaning of the Indian Penal Code.

Investigation to be deemed judicial proceeding.

And every statement made by any person examined by or before the manager with reference to such investigation, whether upon oath or otherwise, shall be taken to be evidence within the meaning of the same Code.

Statements of persons examined to be evidence.

17. The manager shall have, for the purpose of realizing and recovering the rents and profits of the said immoveable property, the same powers as the taluqdár would have had for such purpose if this Act had not been passed.

Manager to have powers of taluqdár.

And if such property, or any part thereof, be in the possession of any mortgagee, the manager may apply to the Court of the Deputy Commissioner within whose jurisdiction the property is situate, and such Court shall cause the same to be delivered to

Power to remove mortgagee in possession.

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* The figure "4" has been substituted for the figure "3" by Act XII. of 1891, Sch. II.

† This reference should now be read as applying to Act XIV. of 1882.—See s. 3 of that Act.

the manager as if a decree therefor had been made in his favour; but without prejudice to the mortgagee preferring his claim under the provisions hereinbefore contained.

18. Subject to the rules made under section 20, the manager shall have power to demise all or any part of the said property for any term of years not exceeding twenty years absolute, to take effect in possession, in consideration of any fine or fines, or without fine, and reserving such rents and under such conditions as may be agreed upon.

Power to lease.

19. The manager, with the previous assent of the Chief Commissioner, shall have power to raise any money which may be required for the settlement of the debts and liabilities (other than as aforesaid) to which the taluqdár is subject, or with which his immoveable property or any part thereof is charged,

Power to raise money by mortgage or sale.

by demising by way of mortgage the whole or any part of such property for a term not exceeding twenty years from the said publication,

or by selling, with the previous consent of the taluqdár and of the person (being of full age) who would be his heir if he died intestate, by public auction or by private contract, and upon such terms as the manager thinks fit, such portion of the same property as may appear expedient.

And no mortgagee advancing money upon any mortgage made under this section shall be bound to see that such money is wanted, or that no more than is wanted is raised.

And the receipt of the manager for any moneys paid to him upon any mortgage or sale made under this section, or for any rents or profits received by him under section 5, shall discharge the person paying the same therefrom, and from being concerned to see to the application thereof.

Manager's receipts.

The power to mortgage conferred by this section shall not be exercisable until six months have elapsed from the publication of the order mentioned in section 3.

VI.—Miscellaneous.

20. The Chief Commissioner may, from time to time, make rules consistent with this Act in all matters connected with its enforcement.

Power to make rules.

Such rules, when approved by the Governor-General of India in Council, and published in the local official Gazette,* shall have the force of law.

21. Whenever the Chief Commissioner thinks fit, he may appoint any officer to be a manager in the stead of any manager appointed under this Act; and thereupon the management then vested under this Act in the former manager shall become vested in the new manager.

Power to appoint new managers.

Every such new manager shall have the same powers as if he had been originally appointed.

22. Every manager appointed under this Act shall be deemed a public servant within the meaning of the Indian Penal Code.

Managers to be public servants.

23. No suit or other proceeding shall be maintained against any person in respect of anything done by him *bonâ fide* pursuant to this Act.

Bar of suits.

* See *Oudh Gazette*, 1st April, 1871, p. 198.

Act XXVI. of 1870.

Petitions, &c., under Act exempt from Court-fees.

24. No petition, application, memorandum of appeal, or other proceeding under this Act, shall be chargeable under the Court Fees Act, 1870.

Saving of jurisdiction of Courts in Oudh in respect of certain suits.

25. Nothing in this Act precludes the Courts of the Province of Oudh, having jurisdiction in suits relating to the succession to, or rights of persons claiming maintenance from, any immoveable property brought under the operation of this Act, from entertaining and disposing of such suits; but to all such suits the manager of such property shall be made a party.

ACT XXVI. OF 1870.*

RECEIVED THE G.-G.'S ASSENT ON THE 3RD OCTOBER 1870.

An Act to amend the Law relating to Prisons.

Preamble.

WHEREAS it is expedient to amend the law relating to prisons in the North-Western Provinces, the Punjab, Oudh, the Central Provinces, "Coorg, and Burma,"† and to provide rules for the regulation of such prisons; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Prisons Act, 1870."

Local extent.

It extends only to the territories‡ respectively under the government of the Lieutenant-Governors of the North-Western Provinces and the Punjab, and under the administration of the Chief Commissioners of Oudh, the Central Provinces, and Lower Burma.‡

2. [*Repealed by Act XII. of 1873, s. 1.*]

Interpretation-clause.

3. In this Act—

"Prison."

"Prison" means any gaol or penitentiary, and includes the airing-ground or other grounds or buildings occupied for the use of the prison;

"Criminal prisoner."

"criminal prisoner" means any prisoner charged with or convicted of a crime; and

"Civil prisoner."

"civil prisoner" means any prisoner confined in a civil jail, or on the civil side of a jail.

CHAPTER II.

MAINTENANCE AND OFFICERS OF PRISONS.

Local Government to provide prison-accommodation.

4. The Local Government shall provide for the prisoners in the territories under such Government accommodation in a prison or prisons constructed and regulated in such manner

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* Act XXVI. of 1870 has been declared in force in Upper Burma (except the Shán States).—See Act XX. of 1886, Sch. II., Pt. I.

† The words "Coorg, and Burma" have been substituted by Act XII. of 1891.

‡ The territories are now known as Lower Burma.— See Act XX. of 1886, s. 2 (*1*) (*b*). The Chief Commissioner is styled Chief Commissioner of Burma. — See Proclamation, dated 25th September 1886, *Gazette of India*, 25th *idem*, Pt. I., p. 539.

as to comply with the requisitions of this Act in respect of the separation of prisoners.

Temporary shelter of prisoners.

5. Whenever it appears to the Local Government that the number of prisoners in any prison is greater than can conveniently or safely be kept therein,

or whenever from the outbreak of epidemic disease within any prison, or for any other reason, it is desirable to provide for the temporary shelter and safe custody of any prisoners,

provision shall be made by such officer, and in such manner as the Local Government from time to time directs, for the temporary shelter and safe custody of so many of the prisoners as cannot be conveniently or safely kept in the prison.

Prisoners for whom such temporary shelter is provided shall be subject to the same rules as if they were within the prison.

Inspector-General of prisons.

6. An Inspector-General of Prisons shall be appointed in the North-Western Provinces, the Punjab, and Oudh by the Local Government, and in the Central Provinces, "Coorg, and Burma"* by the Governor-General in Council.†

In each Inspector-General so appointed shall be vested (subject to the orders of the Local Government) the general control and superintendence of all prisons situate in the territories under such Government.

Officers of prison.

7. For every prison there shall be a superintendent, a medical officer (who may also be the superintendent), a gaoler, and such subordinate officers as the Local Government thinks necessary.

Subject to the orders of the Governor-General in Council, the Local Government may direct that for any specified prison there shall also be a deputy medical officer and a deputy gaoler.

Appointment of officers.

8. The Local Government shall appoint the superintendent and the medical officer and the deputy medical officer.

The superintendent (subject to the approval of the Inspector-General of Prisons) shall appoint the gaoler and deputy gaoler.

The superintendent shall also appoint the subordinate officers.

Salaries, suspension, and dismissal of officers.

9. Every officer appointed under this Act shall receive such salary as‡ the Local Government directs; and may be suspended or dismissed by the authority appointing him:

Provided that no gaoler or deputy gaoler shall be dismissed without the consent of the Inspector-General of Prisons.

Any subordinate officer dismissed under this section may appeal to the Inspector-General, whose orders on such appeal shall be final.

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* The words "Coorg, and Burma" have been substituted by Act XII. of 1891.

† The first sentence of s. 6 has been substituted by Act XIV. of 1878, s. 2.

‡ Here certain words, which were repealed by Act XII. of 1891, have been omitted.

Act XXVI. of 1870.

CHAPTER III.

DUTIES OF OFFICERS.

Generally.

Officers to obey superintendent.

10. All officers of a prison shall obey the directions of the superintendent; all subordinate officers shall perform such duties as may be directed by the gaoler with the sanction of the superintendent; and the duties of each subordinate officer shall be inserted in a book to be kept by him.

Officers not to sell or let to prisoners.

11. No officer of a prison shall sell or let, nor shall any person in trust for or employed by him sell or let, or derive any benefit from selling or letting, any article to any prisoner.

Officers not to contract with prisoners; nor to benefit by sales.

12. No officer of a prison shall, nor shall any person in trust for or employed by him, have any interest, direct or indirect, in any contract for the supply of the prison; nor, except so far as is expressly allowed by rules made under section 54, shall he derive any benefit, directly or indirectly, from the sale of any article on behalf of the prison, or belonging to a prisoner.

Superintendent.

Duties of superintendent.

13. Subject to the orders of the Inspector-General of Prisons, the superintendent shall—

manage the prison in all matters relating to discipline, labour, expenditure, punishment, and control;

correspond on all matters connected with the prison with and through the Inspector-General;

submit to the Inspector-General all bills of prison-expenditure with proper vouchers for audit;

report to the Inspector-General from time to time, as they occur, all escapes and re-captures, and all outbreaks of epidemic disease;

send to the Inspector-General returns of all prisoners sentenced to transportation;

periodically inspect all property of the Government in his charge, and report thereon to the Inspector-General; and,

generally, obey all rules made under section 54 for the guidance of the superintendent.

The superintendent shall also obey all orders respecting the prison given by the Magistrate of the district, or the Deputy Commissioner, as the case may be, and shall report to the Inspector-General all such orders, and the action taken thereon.

Medical Officer.

Power to make rules as to medical officer's duties.

14. The Local Government shall make rules as to each of the following matters:—

how often the medical officer shall visit the prison and see each prisoner;

the records to be made respecting sick prisoners;

periodical inspection of every part of the prison;

reports on its cleanliness, drainage, warmth, and ventilation;

reports on the provisions, water, clothing, and bedding supplied to the prisoners.

Medical officer to obey such rules.

The medical officer shall obey such rules.

15. Whenever the medical officer has reason to believe that the mind of a prisoner is, or is likely to be, injuriously affected by the discipline or treatment to which he is subjected, the medical officer shall report the case in writing to the superintendent, together with such directions as the medical officer thinks proper.

To report special cases.

To make entries as to death of prisoners.

16. On the death of any prisoner, the medical officer shall forthwith record in writing the following particulars, namely:—

when the deceased was taken ill,

when the medical officer was first informed of the illness,

the nature of the disease,

when the prisoner died,

and (in cases where a *post-mortem* examination is made) an account of the appearances after death,

together with any special remarks that appear to the medical officer to be required.

17. Where a deputy medical officer is appointed to a prison, he shall be competent to perform any duty required by this Act, or by any rule made hereunder, to be performed by the medical officer.

Deputy medical officer.

When there is no deputy medical officer, or when his services are not available by reason of sickness or other cause, the Local Government may, by general or special order, appoint a subordinate medical officer to act as a substitute for the medical officer, and the subordinate medical officer so appointed shall perform all the duties of the medical officer.

Subordinate medical officer.

Gaoler.

18. The gaoler shall reside in the prison, unless the superintendent permits him in writing to reside elsewhere. The gaoler shall not, without the Inspector-General's sanction, be concerned in any other employment.

Residence of gaoler.

Gaoler to deliver list of prisoners in punishment-cells.

19. The gaoler shall deliver to the medical officer daily a list of such prisoners as are confined in punishment-cells.

To give notice of death of prisoners.

20. Upon the death of a prisoner, the gaoler shall give immediate notice thereof to the superintendent.

Act XXVI. of 1870.

To keep enumerated books and accounts.

21. The gaoler shall keep, or cause to be kept, the following records:—

(1) a register of warrants;

(2) a book showing when each prisoner is to be released;

(3) a punishment-book for the entry of the punishments inflicted for prison offences;

(4) a visitors' book for the entry of any observations made by visitors to the prison;

(5) a record of the money and other articles taken from prisoners;

and all such other records as may be prescribed by rules made under section 54.

Responsible for safe custody of documents.

22. The gaoler shall be responsible for the safe custody of the records to be kept by him under section 21, and also for the commitments and all other documents confided to his care.

Not to be absent without leave.

23. The gaoler shall not be absent from the prison for a night without permission in writing from the superintendent; but if absent without leave for a night from unavoidable necessity, he shall report the fact and the cause of it to the superintendent.

Deputy gaoler.

24. Where a deputy gaoler is appointed to a prison, he shall be competent to perform any duty required by this Act or by any rule made under section 54 to be performed by the gaoler.

Where there is no deputy gaoler, or where his services are not available by reason of sickness or other cause, the superintendent shall, when the gaoler is absent from the prison, or temporarily incapacitated, appoint an officer of the prison to act as his substitute during such absence or incapacity; and the substitute so appointed shall have all the powers and perform all the duties of the gaoler.

Subordinate Officers.

Powers of gate-porter.

25. The officer acting as gate-porter, or any other officer of the prison, may examine anything carried in or out of the prison, and may stop and search any person suspected of bringing in spirits or other prohibited articles into the prison, or of carrying out any property belonging to the prison, and, if any such articles or property be found, shall give immediate notice thereof to the gaoler.

Subordinate officers not to be absent without leave.

26. Subordinate officers shall not be absent from the prison without leave from the superintendent or from the gaoler, and before absenting themselves they shall leave their keys in the gaoler's office.

CHAPTER IV.

Admission, Removal, and Discharge of Prisoners.

Prisoners to be searched on entrance.

27. When a prisoner is first admitted, and whenever he afterwards enters the prison, he shall be searched, and all weapons and prohibited articles shall be taken from him.

Every criminal prisoner shall also, as soon as possible after admission, be examined by the medical officer, who shall enter in a book to be kept by the gaoler, a record of the state of the prisoner's health, and any observations which the medical officer thinks fit to add.

Medical examination of criminal prisoners.

28. All money or other effects in respect whereof no order of a competent Court has been made, and which may be brought into the prison by any criminal prisoner, or sent to the prison for his use, shall be placed in the custody of the gaoler.

Effects of criminal prisoners retained.

29. All prisoners, previously to being removed to any other prison, shall be examined by the medical officer.

Medical examination before removal and discharge of prisoners.

No prisoner shall be removed to any other prison unless the medical officer certifies that the prisoner is free from any illness rendering him unfit for removal.

No prisoner shall be discharged against his will from prison, if labouring under any acute or dangerous distemper, nor until, in the opinion of the medical officer such discharge is safe.

CHAPTER V.

DISCIPLINE OF PRISONERS.

30. The requisitions of this Act, with respect to the separation of prisoners, are as follows:—

Requisitions of Act as to separation of prisoners.

(1.)—In a prison containing female prisoners as well as males, the women shall be imprisoned in separate buildings or separate parts of the same building, in such manner as to prevent their seeing, or conversing or holding any intercourse with the men.

(2.)—In a prison where children under 12 years of age are confined, means shall be provided for separating them altogether from the other prisoners.

(3.)—Criminal prisoners before trial shall be kept apart from convicted prisoners.

(4.)—Civil prisoners shall be kept apart from criminal prisoners.

31. The Local Government shall have power to make rules—

Rules as to separate confinement.

(1) as to what cells only shall be used for the separate confinement of prisoners:

(2) as to the time during which prisoners not guilty of offences against prison-rules may be confined separately.

32. No cell shall be used for separate confinement unless it is furnished with the means of enabling the prisoner to communicate at any time with an officer of the prison.

Cells to be furnished with means of communication.

33. Every prisoner under warrant or order for execution shall, immediately on his arrival in the prison after sentence, be searched by, or by order of, the gaoler, and all articles shall

Prisoners under sentence of death.

Act XXVI. of 1870.

be taken from him which the gaoler deems it dangerous or inexpedient to leave in his possession.

Every such prisoner shall be confined in a cell apart from all other prisoners, and shall be placed by day and by night under the charge of an officer or guard.

CHAPTER VI.

FOOD, CLOTHING, AND BEDDING OF PRISONERS.

Civil prisoner may maintain himself.

34. A civil prisoner shall be permitted to maintain himself, and to purchase, or receive from private sources at proper hours, food, clothing, bedding, or other necessaries, but subject to examination, and to such rules as may be approved by the Inspector-General.

Civil prisoner not to sell provisions.

35. No part of any food, clothing, bedding, or other necessaries belonging to any civil prisoner, shall be sold to any other prisoner; and any civil prisoner transgressing this regulation shall lose the privilege of purchasing food, or receiving it from private sources, for such time as the superintendent thinks proper.

Allowance of clothing and bedding.

36. Every civil prisoner unable to provide himself with sufficient clothing and bedding shall be supplied by the superintendent with such clothing and bedding as may be necessary.

Judgment-creditor to defray such allowance.

When any such prisoner has been committed to prison in execution of a decree in favour of a private person, such person, or his representative, shall be liable to pay to the superintendent on demand the cost of the clothing and bedding so supplied to the prisoner; and in default of such payment the prisoner shall be released.

CHAPTER VII.

EMPLOYMENT OF PRISONERS.

Work and earnings of civil prisoners.

37. Civil prisoners may, with the superintendent's permission, work and follow their respective trades and professions.

Civil prisoners finding their own implements, and not maintained at the expense of the prison, shall be allowed to receive the whole of their earnings; but the earnings of such as are furnished with implements, or are maintained at the expense of the prison, shall be subject to a deduction, to be determined by the superintendent, for the use of implements and the cost of maintenance.

Examination by medical officer of labouring prisoners.

38. The medical officer shall, from time to time, examine the labouring prisoners while they are employed, and shall enter in his journal the name of any prisoner whose health he thinks likely to be injured by a continuance at hard labour, and thereupon such prisoner shall not again be employed at such labour, until the medical officer certifies that he is fit for such employment.

But if the medical officer certifies that such prisoner may, without detriment to his health, be employed on some lighter kind of labour, it shall be lawful for the gaoler so to employ him.

Employment of prisoners sentenced to simple imprisonment.

39. Provision shall be made by the superintendent for the employment (as long as they so desire) of all criminal prisoners sentenced to simple imprisonment.

The superintendent shall make rules as to the amount and nature of such employment; but no prisoner not sentenced to rigorous imprisonment shall be punished for neglect of work, excepting by such alteration in the scale of diet as may be established by the rules of the prison in the case of neglect of work by such prisoners.

CHAPTER VIII.

Health of Prisoners.

Names of sick prisoners to be reported to gaoler.

40. The names of prisoners desiring to see the medical officer, or appearing out of health in mind or body, shall be reported by the officer attending them to the gaoler.

Gaoler to report them to medical officer.

The gaoler shall, without delay, call the attention of the medical officer to any prisoner desiring to see him, or who is ill, or whose state of mind or body appears to require attention;

and shall carry into effect the medical officer's written directions respecting alterations of the discipline or treatment of any such prisoner.

Entry of directions by medical officer.

41. All directions given by the medical officer in relation to any prisoner with the exception of orders for the supply of medicines, or directions relating to such matters as are carried into effect by the medical officer himself or under his superintendence, shall be entered day by day in his journal, which shall have a separate column wherein entries shall be made by the gaoler, stating in respect of each direction the fact of its having been or not having been complied with, accompanied by such observations, if any, as the gaoler thinks fit to make, and the date of the entry.

Infirmaries.

42. In every prison an infirmary, or proper place for the reception of sick prisoners, shall be provided.

CHAPTER IX.

Visits to and Correspondence of Prisoners.

Visits to prisoners.

43. Due provision shall be made for the admission, at proper times, and under proper restrictions, into every prison, of persons with whom prisoners before trial may desire to communicate.

Correspondence of prisoners.

The Local Government shall also impose such restrictions upon the communication and correspondence of prisoners with their friends as it thinks necessary for the maintenance of good order and discipline.

Act XXVI. of 1870.

Power of gaoler as to visitors.

44. The gaoler may demand the name and address of any visitor to a prisoner; and, when the gaoler has any ground for suspicion, may search visitors, or cause them to be searched, but the search shall not be in the presence of any prisoner or of another visitor.

In case of any such visitor refusing to be searched, the gaoler may deny him admission; and the grounds of such proceeding, with the particulars thereof, shall be entered in his journal.

CHAPTER X.

OFFENCES IN RELATION TO PRISONS.

Carrying liquor, tobacco, or drugs into prison;

45. Whoever, contrary to the regulations of the prison, brings, throws, or attempts by any means whatever to introduce, into any prison, or any place provided under section 5 for the temporary shelter and safe custody of prisoners, any spirituous or fermented liquor, or tobacco, or intoxicating or poisonous drug;

suffering liquor, &c., to be sold or used in prison;

and every officer of a prison who knowingly suffers any such liquor, tobacco, or drug to be sold or used in such prison or place contrary to such regulations;

carrying letters into and out of prison;

and whoever, contrary to such regulations, conveys, or attempts to convey, any letter or other article not allowed by such regulations into or out of any such prison or place;

abetment of such offences;

and whoever abets, within the meaning of the Indian Penal Code, any offence made punishable by this section,

punishment for such offences.

shall, on conviction before a Magistrate, be liable to rigorous imprisonment for a term not exceeding six months, or to fine not exceeding two hundred rupees, or to both.

Notice of penalties to be placed outside prison.

46. The superintendent shall cause to be affixed, in a conspicuous place outside the prison or the place provided as aforesaid, a notice setting forth the penalties incurred by persons committing any offence under section 45.

CHAPTER XI.

PRISON OFFENCES.

List of prison-offences.

47. The following acts are declared to be offences against prison-discipline :—

(1) wilful disobedience to the regulations of the prison by any prisoner;

(2) assault* or use of criminal force by any prisoner;

(3) insulting or threatening language by any prisoner to any officer or prisoner;

(4) indecent or disorderly behaviour by any prisoner;

(5) wilfully disabling himself from labour;

* The word "assault" has been substituted for the word "assaults" by Act XII. of 1891.

(6) contumaciously refusing to work ;

(7) filing or cutting irons or bars ;

(8) idleness or negligence at work by any convicted criminal prisoner ;

(9) wilful mismanagement of work by any convicted criminal prisoner ;

(10) wilful damage to prison-property ;

(11) conspiring to escape, or to assist in escaping, or to commit any other of the offences aforesaid.

Superintendent's power to punish prison-offenders.

48. The superintendent may examine any person touching such offences, and determine thereupon and punish such offences—

(1) by imprisoning the offender in solitary confinement for any time not exceeding seven days ;

(2) by ordering the offender for any time not exceeding three days to close confinement, to be there kept upon a diet reduced to such extent as the Local Government shall prescribe ;

(3) by corporal punishment not exceeding thirty stripes of a ratan ; or

(4) where the offender is not sentenced to rigorous imprisonment, by hard labour for any time not exceeding seven days.

The gaoler shall enter in a separate book, called the punishment-book, a statement of the nature of any offence that has been punished under this section, with the addition of the name of the offender, the date of the offence, and the amount of punishment inflicted. Such statement shall be signed by the superintendent.

Punishment of prisoners by Magistrate.

49. If any prisoner is guilty of repeated offences against prison-discipline, or is guilty of any offence against prison-discipline, which the superintendent thinks is not adequately punishable under section 48, the superintendent shall report the same to the Magistrate of the district* or any Magistrate empowered to receive complaints without reference by the Magistrate of the district.*

Such Magistrate shall have power to inquire upon oath and to determine concerning any matter so reported to him, and to sentence the offender to be punished—

by confinement in a punishment-cell or in irons for any term not exceeding six months,

or by corporal punishment not exceeding thirty stripes of a ratan,

or by rigorous imprisonment for a term not exceeding six months, such term to be in addition to the term for which he is undergoing imprisonment.

Nothing in this or the last preceding section shall authorize the infliction of corporal punishment, or confinement in irons, on any female prisoner, or any civil prisoner.

Corporal punishment

50. All corporal punishment within the prison shall be inflicted in the presence of the superintendent, subject to the law† for the time being in force relating to the infliction of corporal punishment, and the precautions to be taken in reference thereto.

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* Now the District Magistrate.—See Act X. of 1882, s. 3.

† See now ss. 390-395 of Act X. of 1882.

Act XXVI. of 1870.

Penalty on officers ill-treating prisoners or violating rules.

51. Every gaoler and subordinate officer of a prison *ill*-treating any prisoner, or wilfully violating or neglecting any rule contained in this Act or made under section 54, shall be liable, on conviction before the superintendent, to fine not exceeding one hundred rupees, or, on conviction before a Magistrate not being the superintendent, to fine not exceeding two hundred rupees, or rigorous imprisonment for a term not exceeding one month, or both.

Any fine imposed by the superintendent under this section may be recovered, either by deductions from the convicted officer's salary and allowances, or under the law* for the time being in force for the recovery of fines.

No person shall, under this section, be punished twice for the same offence.

CHAPTER XII.

MISCELLANEOUS.

Confinement in irons of prisoners sentenced to rigorous imprisonment.

52. Whenever the superintendent considers it necessary (with reference either to the state of the prison or the character of the prisoners) for the safe custody of any prisoners that they should be confined in irons, the superintendent may so confine them.

Confinement in irons by gaoler of his own authority.

53. Except in case of urgent necessity, no prisoner shall be put in irons or under mechanical restraint by the gaoler of his own authority, and notice thereof shall be forthwith given to the superintendent.

Except in case of urgent necessity, no prisoner shall be kept in irons or under mechanical restraint for more than twenty-four hours without an order in writing from the superintendent specifying the cause thereof, and the time during which the prisoner is to be kept in irons or under mechanical restraint. Such order shall be kept by the gaoler as his warrant.

Power to make supplementary prison-rules.

54. The Local Government may, from time to time, make rules consistent with this Act—

(1) for the government of prisons and for the guidance of all officers appointed hereunder,

(2) as to sales of articles on behalf of prisons or belonging to prisoners, and as to the commission receivable thereon;

(3) as to the food and clothing of criminal prisoners;

(4) for the employment and control of convicts within or without prisons; and for the guidance of the guards in charge of such convicts;

(5) for remission of sentences;

(6) for rewards for good conduct; and

(7) for the appointment and guidance of visitors of prisons.

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* See Act I. of 1868, s. 5.

Copies of such rules, so far as they affect the government of prisons, shall be exhibited in some place to which all persons employed within a prison have access.* Act XXVII. of 1870.

55. All rules now in force relating to any of the matters mentioned in sections 14, 31, 39, and 54, shall, so far as such rules are consistent with this Act, be deemed to have been made under those sections respectively.

Present rules.

56. All or any of the powers and duties conferred and imposed by this Act on a superintendent may be exercised and performed by such other officer as the Local Government from time to time appoints in this behalf.

Exercise of powers of superintendent.

ACT XXVII. OF 1870.†

RECEIVED THE G.-G.'S ASSENT ON THE 25TH NOVEMBER 1870.

An Act to amend the Indian Penal Code.

Preamble.

FOR the purpose of amending the Indian Penal Code; It is hereby enacted as follows:—

Liability for act done by several persons in furtherance of common intention.

1. For section 34 of the said Code, the following section shall be substituted:—

"34." [*See above, p. 358.*]

"Offence."

2. For section 40 of the said Code, the following section shall be substituted:—

"40." [*See above, p. 359.*]

Proviso as to sentence for term exceeding ten years, but not for life.

3. Section 56 of the said Code shall be read as if the following proviso were added thereto:

"Provided that" [*See above, p. 361.*]

Conspiracy to commit offences punishable by section 121.

4. After section 121 of the said Code, the following section shall be inserted:—

"121A." [*See above, p. 377.*]

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* Rules made under this section for the government of prisons, and guidance of officers of prisons, are contained in the *Jail Manual*.

† Act XXVII. of 1870 has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886.

It is included in the Schedule to the Santál Parganas Laws Regulation, III. of 1886.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum . . .	See *Gazette of India* .	Oct. 22, 1881, Pt. I., p. 504.
The North-Western Provinces Tarái	Ditto .	Sep. 23, 1876, Pt. I., p. 505.

Act XXVII. of 1870.

Exciting disaffection.

5. After section 124 of the said Code, the following section shall be inserted :—

"124A." [*See above, p. 378.*]

Addition to section 131.

6. Section 131 of the said Code shall be read as if the following Explanation were added thereto :—

"*Explanation.*" [*See above, p. 380.*]

7. [*Repealed by Act XII. of 1891, Sch. I.*]

Amendment of sections 222 and 223.

8. Sections 222 and 223 of the said Code shall be construed as if, after the word 'offence,' the following words were inserted (that is to say), "or lawfully committed to custody;"

and section 221 of the said Code shall be construed as if the following words were added thereto (that is to say), "or if the person was lawfully committed to custody."

9. [*Repealed by Act XII. of 1891, Sch. I.*]

Keeping lottery-office.

10. After section 294, and before Chapter XV. of the Indian Penal Code, the following section shall be inserted :—

"294A." [*See above, p. 411.*]

Attempts by life-convicts.

11. Section 307 of the said Code shall be read as if the following clause were added thereto :—

"When any person offending under this section is under sentence of transportation for life, he may, if hurt is caused, be punished with death."

Causing death by negligence.

12. After section 304 of the same Code, the following section shall be inserted :—

"304A." [*See above, p. 415.*]

ACT I. OF 1871.*

Act I. of 1871.

THE CATTLE-TRESPASS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 13TH JANUARY 1871.

An Act to consolidate and amend the law relating to Trespasses by Cattle.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to trespasses by cattle; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Title and extent.

1.† (*1*) This Act may be called the Cattle-trespass Act, 1871; and

(*2*) It extends to the whole of British India except the Presidency-towns and such local areas as the Local Government, by notification in the official Gazette, may from time to time exclude from its operation.

(*3*) The Local Government may at any time, by notification in the official Gazette, cancel or vary a notification under sub-section (*2*).

Repeal of Acts.

2. The Acts mentioned in the schedule hereto annexed are repealed.

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* Act I. of 1871 has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886.

It is included in the Schedule to the Santál Parganas Laws Regulation, III. of 1886.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

The Districts of Hazáribágh, Lohardaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhan in the District of Singbhum	See *Gazette of India* .	Oct. 22, 1881, Pt. I., p. 504.
The North-Western Provinces Tarái	Ditto .	Sep. 23, 1876, Pt. I., p. 505.

As to transfer of functions of Local Government and District Magistrate to local authorities, see the Central Provinces Local Self-government Act, I. of 1883, s. 9, cl. *f*; the North-Western Provinces and Oudh Local Boards Act, XIV. of 1883, s. 24, cl. *f*; and the Punjab District Boards Act, XX. of 1883, s. 20 (*2*), cl. *n*.

Act XVIII. of 1883 (*to amend the Cattle-trespass Act, 1871*) is repealed by Act I. of 1891 (*an Act to amend the Cattle-trespass Act, 1871, and to incorporate therein Act XVIII. of 1883*); provided that orders which have been made and notified under that Act (XVIII. of 1883) by the Local Government, and are in force immediately before the commencement of this Act (I. of 1891), shall be deemed to have been made under the Cattle-trespass Act, 1871, as amended by Act I. of 1891.—See Act I. of 1891, s. 10.

Any enactment or documents referring to the Cattle-trespass Act, 1871, or to Act XVIII. of 1883 (*to amend the Cattle-trespass Act, 1871*), shall be construed to refer to the Cattle-trespass Act, 1871, as amended by Act I. of 1891.—See Act I. of 1891, s. 12.

† S. 1 has been substituted by Act I. of 1891.

Act I of 1871.

References to repealed Acts.

References to any of the said Acts in Acts passed subsequently thereto shall be read as if made to this Act.

All pounds established, pound-keepers appointed, and villages determined, under Act No. III. of 1857* (*relating to Trespasses by Cattle*), shall be deemed to be, respectively, established, appointed, and determined under this Act.

Interpretation-clause.

3. In this Act—

'Officer of police' includes also village-watchman, and

'Cattle' includes also elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats, and kids, and

'Local authority' means any body of persons for the time being invested by law with the control and administration of any matters within a specified local area, and

'Local fund' means any fund under the control or management of a local authority.†

CHAPTER II.

POUNDS AND POUND-KEEPERS.

Establishment of pounds.

4. Pounds shall be established at such places as the Magistrate of the District, subject to the general control of the Local Government, from time to time directs.

The village by which every pound is to be used shall be determined by the Magistrate of the District.

Control of pounds. Rates of charge for feeding impounded cattle.

5. The pounds shall be under the control of the Magistrate of the District; and he shall fix, and may from time to time alter, the rates of charge for feeding and watering impounded cattle.

Appointment of pound-keepers.

6. The Magistrate of the District shall also appoint for each pound a pound-keeper:

Ex-officio pound-keepers in Madras and Bombay.

Provided that, in the Presidency of Fort St. George, the heads of villages, and in the Presidency of Bombay, the police-patils, or (where there are no police-patils) the heads of villages, shall be *ex-officio* the keepers of village-pounds.

Suspension or removal of pound-keepers.

Every pound-keeper appointed by the Magistrate of the District may be suspended or removed by such Magistrate.

Pound-keepers may hold other offices.

Any pound-keeper may hold simultaneously any other office under Government.

Pound-keepers to be 'public servants'

Every pound-keeper shall be deemed a public servant within the meaning of the Indian Penal Code.

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* Repealed by this Act, s. 2.

† The last two paras. of s. 3 have been added by Act I. of 1891.

Duties of Pound-keepers.

To keep registers and furnish returns.

7. Every pound-keeper shall keep such registers and furnish such returns as the Local Government from time to time directs.

To register seizures.

8 When cattle are brought to a pound, the pound-keeper shall enter in his register—

(*a*) the number and description of the animals,

(*b*) the day and hour on and at which they were so brought,

(*c*) the name and residence of the seizer, and

(*d*) the name and residence of the owner, if known,

and shall give the seizer or his agent a copy of the entry.

To take charge of and feed cattle.

9. The pound-keeper shall take charge of, feed, and water the cattle until they are disposed of as hereinafter directed.

CHAPTER III.

IMPOUNDING CATTLE.

Cattle damaging land.

10. The cultivator or occupier of any land,

or any person who has advanced cash for the cultivation of the crop or produce on any land,

or the vendee or mortgagee of such crop or produce, or any part thereof,

may seize, or cause to be seized, any cattle trespassing on such land, and doing damage thereto, or to any crop or produce thereon, and "send them, or cause them to be sent, within twenty-four hours,"* to the pound established for the village in which the land is situate.

Police to aid seizure.

All officers of police shall, when required, aid in preventing (*a*) resistance to such seizures, and (*b*) rescues from persons making such seizures.

Cattle damaging public roads, canals, and embankments.

11.† Persons in charge of public roads, pleasure-grounds, plantations, canals, drainage-works, embankments, and the like, and officers of police, may seize, or cause to be seized, any cattle doing damage to such roads, grounds, plantations, canals, drainage-works, embankments, and the like, or the sides or slopes of such roads, canals, drainage-works, or embankments, or found straying thereon, and shall "send them, or cause them to be sent, within twenty-four hours,"‡ to the nearest pound.

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* In s. 10, the words quoted have been substituted for the words, "take them, or cause them to be taken, without unnecessary delay," by Act I. of 1891.

† As to the application of this section to reserved and protected forests, see Act VII. of 1878, s. 69; to railways, see Act IX. of 1890, s. 125.

‡ In s. 11, the words quoted have been substituted for the words, "take them without unnecessary delay," by Act I. of 1891.

Act I. of 1871.

Fines for cattle impounded.

12. For every head of cattle impounded as aforesaid, the pound-keeper shall levy a fine* according to the following scale† :—

Elephant	...	...	...	two rupees.
Camel or buffalo	...	...	...	eight annas.
Horse, mare, gelding, pony, colt, filly, mule, bull, bullock, cow, or heifer		...	...	four ,,
Calf, ass, or pig	...	...	...	two ,,
Ram, ewe, sheep, lamb, goat, or kid			...	one anna.

Provided that, when it appears to the Local Government from the report of a Magistrate of a District, or on the representation of a local authority, that in any local area subject to the jurisdiction or control of such Magistrate, or authority, cattle are habitually allowed to trespass on land and damage crops or other produce thereon, the Local Government may, by notification in the official Gazette, direct that, for every head of cattle of any kind specified therein which may be seized within such local area and impounded as aforesaid, the pound-keeper shall levy such fine, not exceeding double the fine mentioned in the foregoing scale, as may be prescribed in the notification.‡

All fines so levied shall be sent to the Magistrate of the District through such officer as the Local Government from time to time directs.

List of fines and charges for feeding.

A list of fines and of the rates of charge for feeding and watering cattle shall be stuck up in a conspicuous place on or near to every pound.

The Local Government may, at any time, by notification in the official Gazette, cancel or vary a notification under the proviso to the first paragraph of this section.§

CHAPTER IV.

DELIVERY OR SALE OF CATTLE.

Procedure when owner claims the cattle, and pays fines and charges.

13. If the owner of impounded cattle or his agent appear and claim the cattle, the pound-keeper shall deliver them to him on payment of the fines and charges incurred in respect of such cattle.

The owner or his agent, on taking back the cattle, shall sign a receipt for them in the register kept by the pound-keeper.

Procedure if cattle be not claimed within a week.

14. If the cattle be not claimed within seven days from the date of their being impounded, the pound-keeper shall report the fact to the officer in charge of the nearest police-station, or to such other officer as the Magistrate of the District appoints in this behalf.

Such officer shall thereupon stick up in a conspicuous part of his office a notice stating—

(*a*) the number and description of the cattle,

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* 7 Bom. C. C. 55.

† For power to prescribe a different scale for cattle impounded under s. 69 of the Indian Forest Act, 1878, see Act VII. of 1878, s. 70.

‡ In s. 12, the proviso has been added by Act I. of 1891.

§ In s. 12 the last paragraph has been added by Act I. of 1891.

(*b*) the place where they were seized,

(*c*) the place where they are impounded,

and shall cause proclamation of the same to be made by beat of drum in the village and at the market-place nearest to the place of seizure.

If the cattle be not claimed within seven days from the date of the notice, they shall be sold by public auction by the said officer, or an officer of his establishment deputed for that purpose, at such place and time, and subject to such conditions, as the Magistrate of the District, by general or special order, from time to time directs :

Provided that, if any such cattle are, in the opinion of the Magistrate of the District, not likely to fetch a fair price if sold as aforesaid, they may be disposed of in such manner as he thinks fit.

Delivery to owner disputing legality of seizure, but making deposit.

15. If the owner or his agent appear and refuse to pay the said fines and expenses, on the ground that the seizure was illegal, and that the owner is about to make a complaint under section 20, then, upon deposit of the fines and charges incurred in respect of the cattle, the cattle shall be delivered to him.

Procedure when owner refuses or omits to pay the fines and expenses.

16. If the owner or his agent appear and refuse or omit to pay or (in the case mentioned in section 15) to deposit the said fines and expenses, the cattle, or as many of them as may be necessary, shall be sold by public auction by such officer, at such place and time and subject to such conditions, as are referred to in section 14.

Deduction of fines and expenses.

The fines leviable, and the expenses of feeding and watering, together with the expenses of sale, if any, shall be deducted from the proceeds of the sale.

Delivery of unsold cattle and balance of proceeds.

The remaining cattle and the balance of the purchase-money, if any, shall be delivered to the owner or his agent, together with an account showing—

(*a*) the number of cattle seized,

(*b*) the time during which they have been impounded,

(*c*) the amount of fines and charges incurred,

(*d*) the number of cattle sold,

(*e*) the proceeds of sale, and

(*f*) the manner in which those proceeds have been disposed of.

Receipt.

The owner or his agent shall give a receipt for the cattle delivered to him and for the balance of the purchase-money (if any) paid to him according to such account.

Disposal of fines, expenses, and surplus proceeds of sale.

17. The officer by whom the sale was made shall send to the Magistrate of the District the fines so deducted.

The charges for feeding and watering, deducted under section 16, shall be paid over to the pound-keeper, who shall also retain and appropriate all sums received by him on account of such charges under section 13.

The surplus unclaimed proceeds of the sale of cattle shall be sent to the Magistrate of the District, who shall hold them in deposit for three months, and, if no claim thereto be preferred and established within that period, shall, at its expiry, dispose of them as hereinafter provided.

Act I. of 1871.

Application of fines and unclaimed proceeds of sales.

18. Out of the sums received on account of fines and the unclaimed proceeds of the sale of cattle, shall be paid—

(*a*) the salaries allowed to pound-keepers under the orders of the Local Government;

(*b*) the expenses incurred for the construction and maintenance of pounds, or for any other purpose connected with the execution of this Act;

and the surplus* (if any) shall be applied, under order of the Local Government to the construction and repair of roads and bridges and to other purposes of public utility.

Officers and pound-keepers not to purchase cattle at sales under Act.

19. No officer of police, or other officer, or pound-keeper appointed under the provisions herein contained, shall, directly or indirectly, purchase any cattle at a sale under this Act.

Pound-keepers when not to release impounded cattle.

No pound-keeper shall release or deliver any impounded cattle otherwise than in accordance with the former part of this chapter, unless such release or delivery is ordered by a Magistrate or Civil Court.

CHAPTER V.†

COMPLAINTS OF ILLEGAL SEIZURE OR DETENTION.

Power to make complaints.

20. Any person whose cattle have been seized under this Act, or, having been so seized, have been detained in contravention of this Act may, at any time within ten days from the date of the seizure, make a complaint to the Magistrate of the District or any Magistrate authorized to receive and try charges without reference by the Magistrate of the District.

Procedure on complaint.

21. The complaint shall be made by the complainant in person, or by an agent personally acquainted with the circumstances. It may be either in writing or verbal. If it be verbal, the substance of it shall be taken down in writing by the Magistrate.

If the Magistrate, on examining the complainant or his agent, sees reason to believe the complaint to be well founded, he shall summon the person complained against, and make an enquiry into the case.

Compensation for illegal seizure or detention.

22. If the seizure or detention be adjudged illegal, the Magistrate shall award to the complainant, for the loss caused by the seizure or detention, reasonable compensation, not exceeding one hundred rupees, to be paid by the person who made the seizure or detained the cattle, together with all fines paid and expenses incurred by the complainant in procuring the release of the cattle;

Release of cattle.

and, if the cattle have not been released, the Magistrate shall, besides awarding such compensation, order their release, and direct that the fines and expenses leviable under this Act shall be paid by the person who made the seizure or detained the cattle.

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* As to the crediting of this surplus to Local Funds, see the Central Provinces Local Self-government Act (I. of 1883), s. 23 (*1*), cl. *c*: and the North-Western Provinces and Oudh Local Boards Act (XIV. of 1883), s. 38, cl. *c*.

† Ch. V. has been substituted for the original by Act I. of 1891.

23. The compensation, fines, and expenses mentioned in section 22, may be recovered as if they were fines imposed by the Magistrate. **Act I. of 1871.**

Recovery of compensation.

CHAPTER VI.

PENALTIES.

Penalty for forcibly opposing the seizure of cattle or rescuing the same.

24. Whoever forcibly opposes the seizure of cattle liable to be seized under this Act,

and whoever rescues the same after seizure, either from a pound, or from any person taking or about to take them to a pound, such person being near at hand, and acting under the powers conferred by this Act,

shall, on conviction before a Magistrate, be punished with imprisonment for a period not exceeding six months, or with fine not exceeding five hundred rupees, or with both.

25. Any fine imposed "under the next following section, or"* for the offence of mischief by causing cattle to trespass on any land, may be recovered by sale of all or any of the cattle by which the trespass was committed, whether they were seized in the act of trespassing or not, and whether they are the property of the person convicted of the offence, or were only in his charge when the trespass was committed.

Recovery of penalty for mischief committed by causing cattle to trespass.

26. Any owner or keeper of pigs, who, through neglect or otherwise damages, or causes or permits to be damaged, any land, or any crop or produce of land, or any public road,† by allowing such pigs to trespass thereon, shall, on conviction before a Magistrate, be punished with fine not exceeding ten rupees.

Penalty for damage caused to land or crops or public roads by pigs.

The Local Government, by notification in the official Gazette, may, from time to time, with respect to any local area specified in the notification, direct that the foregoing portion of this section shall be read as if it had reference to cattle generally, or to cattle of a kind described in the notification, instead of to pigs only, or as if the words 'fifty rupees' were substituted for the words 'ten rupees,' or as if there were both such reference and such substitution. ‡

The Local Government may at any time, by notification in the official Gazette, cancel or vary a notification under this section. §

27. Any pound-keeper releasing or purchasing or delivering cattle contrary to the provisions of section 19, or omitting to provide any impounded cattle with sufficient food and water, or failing to perform any of the other duties imposed upon him by this Act, shall, over and above any other penalty to which he may be liable, be punished, on conviction before a Magistrate, with fine not exceeding fifty rupees.

Penalty on pound-keeper failing to perform duties.

Such fines may be recovered by deductions from the pound-keeper's salary.

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* In s. 25 the words quoted have been inserted by Act I. of 1891.

† "Public road" here includes a railway.—See Act IX. of 1890, s. 125.

‡ In s. 26, the last two paragraphs have been added by Act I. of 1891.

§ In s. 26, the last two paragraphs have been added by Act I. of 1891.

Act I. of 1871.

Application of fines recovered under section 25, 26, or 27.

28. All fines recovered under section 25, section 26, or section 27, may be appropriated in whole or in part as compensation for loss or damage proved to the satisfaction of the convicting Magistrate.

CHAPTER VII.

SUITS FOR COMPENSATION.

Saving of right to sue for compensation.

29. Nothing herein contained prohibits any person whose crops or other produce of land have been damaged by trespasser cattle from suing for compensation in any competent Court.

Set-off.

30. Any compensation paid to such person under this Act by order of the convicting Magistrate shall be set off and deducted from any sum claimed by, or awarded to, him as compensation in such suit.

CHAPTER VIII.*

SUPPLEMENTAL.

Power for Local Government to transfer certain functions to local authority, and direct credit of surplus receipts to local fund.

31. The Local Government may, from time to time, by notification in the official Gazette—

(*a*) transfer to any local authority, within any part of the territories under its administration in which this Act is in operation, all or any of the functions of the Local Government or the Magistrate of the District under this Act, within the local area subject to the jurisdiction of the local authority, or

(*b*) direct that the whole or any part of the surplus accruing in any district under section 18 of this Act shall be placed to the credit of such local fund or funds as may be formed for any local area or local areas comprised in that district,

and may, from time to time, by notification in the official Gazette, cancel or vary any notification under this section.

SCHEDULE.

(See section 2.)

Number and year.	Title of Act.
III. of 1857	An Act relating to trespasses by cattle.
V. of 1860	An Act to amend Act III. of 1857 (relating to trespasses by cattle).
XXII. of 1861	An Act to amend Act III. of 1857 (relating to trespasses by cattle).

* Ch. VIII. has been added by Act I. of 1891.

ACT IV. OF 1871.

THE CORONERS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 27TH JANUARY 1871.

An Act to consolidate and amend the laws relating to Coroners.

Preamble.

WHEREAS it is expedient to consolidate and amend the laws relating to Coroners in the Presidency-towns; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Coroners Act, 1871."

Local extent.

[*Repealed by Act X. of 1881.*]

Commencement.

[*Repealed by Act XVI. of 1874.*]

Repeal of enactments.

2. [*Repealed by Act XII. of 1873.*]

CHAPTER II.

APPOINTMENT OF CORONERS.

Coroners of Calcutta and Bombay.

3. Within the local limits of the ordinary original civil jurisdiction of each of the High Courts of Judicature at Fort William and Bombay there shall be a Coroner. Such Coroners shall be called respectively the Coroner of Calcutta and the Coroner of Bombay.*

Their appointment, suspension, and removal.

4. Every such officer shall be appointed and may be suspended or removed by the Local Government.†

Coroners to be 'public servants.'

5. Every Coroner shall be deemed a public servant within the meaning of the Indian Penal Code.

Power to hold other offices.

6. Any Coroner may hold simultaneously any other office under Government.

Oath to be taken by Coroner.

7. [*Repealed by Act X. of 1873.*]

CHAPTER III.

DUTIES AND POWERS OF CORONERS.

Jurisdiction to enquire into deaths.

8. When a Coroner "has reason to believe"‡ that the death of any person has been caused by accident, homicide, suicide, or suddenly by means unknown, or that any person, being a prisoner, has died in prison,

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* S. 3 has been substituted by Act X. of 1881.

† The second paragraph of s. 4 has been omitted, having been repealed by Act XII. of 1891.

‡ The words quoted have been substituted for the words "is informed" by Act X. of 1881, s. 5.

Act IV. of 1871.

and that the body is lying within the place for which the Coroner is so appointed,

the Coroner shall enquire into the cause of death.

Every such enquiry shall be deemed a judicial proceeding within the meaning of section 193 of the Indian Penal Code.

Coroner to be sent for when prisoner dies.

9. Whenever a prisoner dies in a prison situate within the place for which a Coroner is so appointed, the Superintendent of the prison shall send for the Coroner before the body is buried. Any Superintendent failing herein shall, on conviction before a Magistrate, be punished with fine not exceeding five hundred rupees.

Nothing in the former part of this section applies to cases in which the death has been caused by cholera or other epidemic disease.

Power to hold inquests on bodies within local limits wherever cause of death occurred.

10. Whenever an inquest ought to be holden on any body lying dead within the local limits of the jurisdiction of any Coroner, he shall hold such inquest, whether or not the cause of death arose within his jurisdiction.

Power to order body to be disinterred.

11.* A Coroner may order a body to be disinterred within a reasonable time after the death of the deceased person, either for the purpose of taking an original inquisition where none has been taken, or a further inquisition where the first was insufficient.

Summoning jury.

12. On receiving notice of any death mentioned in section 8, the Coroner shall summon five, seven, nine, eleven, thirteen, or fifteen respectable persons to appear before him at a time and place to be specified in the summons, for the purpose of enquiring when, how, and by what means the deceased came by his death.

Inquest may be on Sunday.

Any inquest under this Act may be held on a Sunday.

Opening Court.

13. When the time arrives, the Coroner shall proceed to the place so specified, open the Court by proclamation, and call over the names of the jurors.

Jurors to be sworn.

14. When a sufficient jury is in attendance, he shall administer an oath to each juror to give a true verdict according to the evidence, and shall then proceed with the jury to view the body.

View of body.

15. The Coroner and the jury shall view and examine the body at the first sitting of the inquest, and the Coroner shall make such observations to the jury as the appearance of the body requires.

Proclamation for witnesses.

16. The Coroner shall then make proclamation for the attendance of witnesses, or, where the enquiry is conducted in secret, shall call in separately such as know anything concerning the death.

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* Compare Act X. of 1882, s. 176, para. 2.

17. "It shall be the duty of all persons acquainted with the circumstances attending the death to appear before the inquest as witnesses; the Coroner shall enquire of such circumstances and the cause of death; and if, before or during the enquiry, he is informed that any person, whether within or without the local limits of his jurisdiction, can give evidence or produce any document material thereto, may issue a summons requiring him to attend and give evidence or produce such document on the inquest."*

Summoning witnesses.

"Any person disobeying such summons shall be deemed to have committed an offence under section 174, section 175, or section 175 of the Indian Penal Code, as the case may be."*

For the purpose of causing prisoners to be brought up to give evidence, the Coroner shall be deemed a Criminal Court within the meaning of Act No. XV. of 1869 (*to provide facilities for obtaining the evidence and appearance of prisoners, and for service of process upon them*).

18. The Coroner may direct the performance of a *post-mortem* examination, with or without an analysis of the contents of the stomach or intestines, by any medical witness summoned to attend the inquest; and every medical witness, other than the Chemical Examiner to Government, shall be entitled to such reasonable remuneration as the Coroner thinks fit.

Post-mortem examinations.

Fees to medical witnesses.

19. All evidence given under this Act shall be on oath, and the Coroner shall be bound to receive evidence on behalf of the party (if any) accused of causing the death of the deceased person.

Evidence to be on oath.

Evidence on behalf of accused.

Witnesses unacquainted with the English language shall be examined through the medium of an interpreter, who shall be sworn to interpret truly as well the oath as the questions put to, and the answers given by, the witnesses.

Interpreter.

After each witness has been examined, the Coroner shall enquire whether the jury wish any further questions to be put to the witness; and if the jury wish that any such questions should be put, the Coroner shall put them accordingly.

Questions suggested by jury.

20. The Coroner shall commit to writing the material parts of the evidence given to the jury, and shall read or cause to be read over such parts to the witness, and then procure his signature thereto.

Coroner to take down evidence in writing.

Any witness refusing so to sign shall be deemed to have committed an offence under section 180 of the Indian Penal Code.

Witnesses to sign depositions.

Every such deposition shall be subscribed by the Coroner.

Coroner to subscribe depositions.

For the purposes of section 26 of the Indian Evidence Act, 1872, a Coroner shall be deemed to be a Magistrate.†

21. The Coroner may adjourn the inquest from time to time, and from place to place.

Adjournment of inquest.

* The first two clauses of s. 17 have been substituted by Act X. of 1881, s. 6, for the two clauses originally enacted.

† This clause has been added by Act X. of 1881, s. 7.

Act IV. of 1871.

Jurors' recognizances.

Whenever the inquest is adjourned, the Coroner shall take the recognizances of the jurors to attend at the time and place appointed, and notify to the witnesses when and where the inquest will be proceeded with.

The amount of such recognizances shall in each case be fixed by the Coroner.

Coroner to sum up to jury.

22. When all the witnesses have been examined, the Coroner shall sum up the evidence to the jury, and the jury shall then consider of their verdict.

Coroner to draw up inquisition.

23. When the verdict is delivered, the Coroner shall draw up the inquisition according to the finding of the jury, or, when the jury is not unanimous, according to the opinion of the majority.

Contents of inquisition.

24. Every inquisition under this Act shall be signed by the Coroner with his name and style of office and by the jurors, and shall set forth—

(1) where, when, and before whom, the inquisition is holden,

(2) who the deceased is,

(3) where his body lies,

(4) the names of the jurors, and that they present the inquisition upon oath,

(5) where, when, and by what means, the deceased came by his death, and

(6) if his death was occasioned by the criminal act of another, who is guilty thereof.

If the name of the deceased be unknown, he may be described as a certain person to the jurors unknown.

Every such inquisition shall be in the form set forth in the second schedule hereto annexed, with such variation as the circumstances of each case require.

Procedure where verdict amounts to murder, culpable homicide, or killing by negligence.

25. When the verdict is that the death has been caused by culpable homicide amounting to murder, or by culpable homicide not amounting to murder, or by a rash or negligent act not amounting to culpable homicide, the Coroner shall bind by recognizance any person knowing or declaring anything material touching such murder, homicide, or act to appear, at the next criminal sessions at which the trial is to be, then and there to prosecute or give evidence against the party charged.

Coroner to certify and deliver inquisitions, depositions, and recognizances.

The Coroner shall certify and subscribe such recognizances, and shall, immediately after the inquest, deliver them, together with the inquisition and evidence, to the proper officer of the Court in which the trial is to be.

Warrant against person accused.

26. The Coroner shall also, where the verdict justifies him in so doing, issue his warrant for the apprehension of the person accused, and commit him to prison until he is thence discharged by due course of law, or, if he be already in prison, issue a detainer to the officer in charge of the jail in which he is.

27. In cases where the jury has found against any person a verdict of culpable homicide not amounting to murder, or of killing by a rash or negligent act not amounting to culpable homicide, the Coroner may, if he thinks fit, accept bail with sufficient sureties for the appearance of such person at the next criminal sessions; and thereupon such person, if in custody of any officer of the Coroner's Court, or in any jail under a warrant of commitment issued by the Coroner, shall be discharged therefrom.

Power to accept bail.

28. When the proceedings are closed, or before, if it be necessary to adjourn the inquest, the Coroner shall give his warrant for the burial of the body on which the inquest has been taken.

Warrant for burial.

Inquisitions not to be quashed for want of forms.

29. No inquisition found upon or by any inquest shall be quashed for any technical defect.

In any case of technical defect, a Judge of the High Court may, if he thinks fit, order the inquisition to be amended, and the same shall forthwith be amended accordingly.

Amendment of inquisition.

30. It shall no longer be the duty of the Coroner to enquire whether any person dying by his own act was or was not *felo de se*, to enquire of treasure-trove or wrecks, to seize any fugitive's goods, to execute process, or to exercise as Coroner any jurisdiction not expressly conferred by this Act.

Cessation of jurisdiction as to treasure-trove, wrecks, &c.

Felo de se. A *felo de se* shall not forfeit his goods.

Deodands. Deodands are hereby abolished.

CHAPTER IV.

CORONERS' JURIES.

31. Whenever any person has been duly summoned to appear as a juror by a Coroner, and fails or neglects to attend at the time and place specified in the summons, the Coroner may cause him to be openly called in his Court three times to appear and serve as a juror; and upon the non-appearance of such person, and proof that such summons has been served upon him, or left at his usual place of abode, may impose such fine upon the defaulter, not exceeding fifty rupees, as to the Coroner seems fit.

Fine on juror neglecting to attend.

32. The Coroner shall make out and sign a certificate, containing the name and surname, the residence, and trade or calling, of every person so making default, together with the amount of the fine so imposed, and the cause of such fine,

Certificate as to defaulting juror.

and shall send such certificate to one of the Magistrates of the place of which he is the Coroner,

and shall cause a copy of such certificate to be served upon the person so fined by having it left at his usual place of residence, or by sending the same through the post-office, addressed as aforesaid and registered.

Service of copy of certificate.

Levy of fine.

33. Thereupon such Magistrate shall cause the fine to be levied in the same manner as if it had been imposed by himself.

Act IV. of 1871.

34. Unless in case of necessity, no person who has appeared, or has been summoned to appear, as a juror on an inquest, and has not made default, shall, within one year after such appearance or summons, be summoned to appear as a juror under this Act.

Jurors not to be twice summoned within the year.

35. When an inquest is held on the body of a prisoner dying within a prison, no officer of the prison, and no prisoner confined therein, shall be a juror on such inquest.

Jurors on inquest on prisoner.

CHAPTER V.

RIGHTS AND LIABILITIES OF CORONERS.

36. Every Coroner shall be entitled to such salary for the performance of the duty of his office as is prescribed in that behalf by the Governor-General in Council.

Coroner's salary.

37. All disbursements duly made by a Coroner for fees to medical witnesses, hire of rooms for the jury, and the like, shall be repaid to him by the Local Government.

Disbursements to be repaid.

38. Every Coroner may, from time to time, with the previous sanction of the Local Government, appoint, by writing under his hand, a proper person to act for him as his deputy in the holding of inquests.*

Power to appoint deputy.

All inquests taken and other acts done by any such deputy, under or by virtue of any such appointment, shall be deemed to be the acts of the Coroner appointing him:

Provided that no such deputy shall act for any such Coroner except during the illness of the said Coroner, or during his absence for any lawful and reasonable cause.

Every such appointment may at any time be cancelled and revoked by the Coroner by whom it was made.

Revocation of appointment.

39. No Coroner or Deputy Coroner shall be liable to serve as a juror.

Exemption from serving on juries.

40. Coroners and Deputy Coroners shall be privileged from arrest while engaged in the discharge of their official duty.

Privilege from arrest.

41. Any Coroner or Deputy Coroner failing to comply with the provisions of this Act, or otherwise misconducting himself in the execution of his office, shall be liable to such fine as the Chief Justice of the High Court, upon summary examination and proof of the failure or misconduct, thinks fit to impose.

Penalty for failure to comply with Act.

42. No proceeding for anything done under this Act, or for any failure to comply with its provisions, shall be commenced or prosecuted† after tender of sufficient amends.

Proceedings barred by tender.

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* Certain words referring to the oath to be taken by the Coroner's deputy, which were repealed by Act X. of 1873, have been omitted.

† Certain words referring to the limitation of suits, which were repealed by Act IX. of 1871, have been omitted.

FIRST SCHEDULE.—[*Repealed by Act XII. of 1873.*]

SECOND SCHEDULE.

Form of Inquisition.

AN INQUISITION taken at on the day of 18 , before E F, Coroner of , on view of the body of A B, then and there lying dead. upon the oath of G H, I J, K L, and M N, then and there duly sworn and charged to enquire when, how, and by what means, the said A B came to his death.

We, the said jurors, find unanimously [*or* by a majority of] that the death of the said A B was caused on or about the day of 18 , by [*here state cause of death as in the following examples* :—

1. *Cases of homicide*]—a blow on the head with a stick inflicted on him by C D, under such circumstances that the act of C D was justifiable [*or* accidental homicide].

—a stab on the heart with a knife inflicted on him by C D, under such circumstances that the act of C D was culpable homicide not amounting to murder [*or* culpable homicide amounting to murder, *or* a rash *or* negligent act not amounting to culpable homicide].

2. *Cases of accident*]—falling out of a boat into the river Hugli whereby he was drowned.

—a kick from a horse which fractured his skull, and ruptured blood-vessels in his head.

3. *Cases of suicide*]—shooting himself through the head with a pistol.

—arsenic, which he voluntarily administered to himself.

4. *Cases of sudden death by means unknown*]—disease of the heart.

—apoplexy.

—sunstroke.

And so say the jurors upon their oath aforesaid.

Witness our hands. E F, Coroner of
G H, I J, K L, M N, O P (jurors).

ACT V. OF 1871.*

vide act VII of 1894 for an

THE PRISONERS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 27TH JANUARY 1871.

An Act to consolidate the laws relating to Prisoners confined by order of a Court.

Preamble.

FOR the purpose of consolidating the laws relating to prisoners confined by order of a Court; It is hereby enacted as follows :—

* Act V. of 1871 has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1866.

It is included in the Schedule to the Santál Parganas Laws Regulation, III. of 1886.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum.—See *Gazette of India*, Oct. 22, 1886, Pt. I., p. 504.

It has been extended, under the same Act, to the Scheduled District of the North-Western Provinces Tarái.—See *Gazette of India*, Sep. 23, 1876, Pt. I. p. 505.

Act V. of 1871.

I.—Preliminary.

Short title.

1. This Act may be called "The Prisoners Act, 1871:"

Local extent.

It extends to the whole of British India.

2. [*Repealed by Act XII. of 1873.*]

II.—Prisoners in the Presidency Towns.

Warrants and writs to be directed to police-officers.

3. All writs or warrants for the arrest or apprehension of any person, issued or awarded by the High Court in the exercise of its ordinary, extraordinary, or other criminal jurisdiction, shall be directed to, and executed by, any officer of police within the local limits of such jurisdiction.

Power to appoint Superintendents of Presidency Prisons.

4. The Local Government may appoint officers who shall have authority to receive and keep prisoners committed to their custody under the provisions of this Part.

All such officers appointed under any Act hereby repealed shall be deemed to be appointed under this Act.

Such officers shall be called, in Calcutta, the Superintendent of the Presidency Prison; in Madras, the Superintendent of Prisons for the town of Madras; and in Bombay, by such title or respective titles as the Local Government from time to time directs.

Every such officer is hereinafter referred to as 'the Superintendent.'

Superintendents to detain persons committed.

5. The Superintendent is hereby authorized and required to keep and detain all persons duly committed to his custody pursuant to the provisions of this Act, or otherwise, by any Court, Judge, Justice of the Peace, Magistrate of Police, Coroner, or other public officer lawfully exercising civil or criminal jurisdiction according to the exigency of any writ, warrant, or order by which such person has been committed, or until such person is discharged by due course of law.

Superintendents to return writs, &c., after execution or discharge.

6. The Superintendent shall forthwith, after the execution of every such writ, order, or warrant, except warrants of commitment for trial, or after the discharge of the person committed thereby, return such writ, order, or warrant to the Court or other officer by which or by whom the same has been issued or made, together with a certificate endorsed thereon, and signed by the Superintendent, showing how the same has been executed, or why the person committed thereby has been discharged from custody before the execution thereof.

Delivery of person sentenced to imprisonment or death.

7. Whenever any person is sentenced by the High Court in the exercise of its original criminal jurisdiction to imprisonment or to death, the Court shall cause him to be delivered to the said Superintendent, together with the warrant of the said Court, and such warrant shall be executed by the Superintendent, and returned by him to the High Court when executed.

Delivery for intermediate custody of persons sentenced to transportation or penal servitude.

8. Whenever any person is sentenced by the High Court in the exercise of its original criminal jurisdiction to transportation or penal servitude, the Court shall cause him to be delivered for intermediate custody to the Superintendent, and the imprisonment of such person shall have effect from such delivery.

Order under Mutiny Act for intermediate custody.

9. Whenever any Judge of a High Court makes, under any Act for the time being in force for punishing mutiny and desertion, and for the better payment of the Army and their quarters, an order for the intermediate custody of an offender sentenced by a Court-martial holden in India, the Judge shall order such offender to be detained for intermediate custody by the Superintendent.

Committals by High Court in execution of a decree or for contempt.

10. Whenever any person is committed by the High Court, whether in execution of a decree or for contempt of Court, or other cause, he shall be taken by the officer to be appointed for that purpose by such Court, and shall be delivered to the Superintendent, together with a warrant of commitment.

Delivery of persons sentenced by Police Magistrate.

11. Whenever any person is sentenced by a Presidency Magistrate* for the town of Calcutta, Madras, or Bombay to imprisonment, either absolutely or for default of payment of any fine imposed by any such Magistrate, or is committed to prison for failure to find security to keep the peace and to be of good behaviour, the Magistrate shall cause him to be delivered to the Superintendent, together with a warrant of the Court.

Delivery of persons committed by Justice or Magistrate or Coroner for trial by High Court.

12. Every person committed by a Justice of the Peace or Magistrate or Coroner for trial by the High Court in the exercise of its original criminal jurisdiction shall be delivered to the Superintendent, together with a warrant of commitment, directing him to have the body of such person before the Court for trial, and the Superintendent shall, as soon as practicable, cause such person to be taken before the Court at a Criminal Session of the said Court, together with the warrant of commitment, in order that he may be dealt with according to law.

Custody, pending enquiries under Act XXIII. of 1861, section 8.

13. Pending any such enquiry as is mentioned in "section 350 of the Code of Civil Procedure,"† which the High Court considers it necessary to make, the defendant may be delivered by the officer of the said Court to the Superintendent, subject to "the provisions as to release on security contained in section 349 of the same Code;"†

and the Superintendent is hereby authorized and required to detain such defendant in safe custody, until he is re-delivered to the officer of the Court for the purpose of being taken before the said Court, in pursuance of an order of the said Court or of a Judge thereof, or until he is released by due course of law.

Delivery of persons arrested in pursuance of warrant of High Court or Small Cause Court.

14. Every person arrested in pursuance of a writ, warrant, or order of the High Court, in the exercise of its original civil jurisdiction,

or in pursuance of a warrant of any Court established in Calcutta, Madras, or Bombay under the Presidency Small Cause Courts Act, 1882,‡

or in pursuance of a warrant issued under section 3 of this Act,

shall be brought without delay before the Court by which, or by a Judge of which, the writ, warrant, or order was issued, awarded, or made, or before

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* See Act X. of 1882 s. 3.

† The words quoted have been substituted by Act XII. of 1891.

‡ See Act XV. of 1882, s. 2.

Act V. of 1871.

a Judge thereof, if the said Court, or a Judge thereof, is then sitting for the exercise of original jurisdiction;

and, if such Court, or Judge thereof, is not then sitting for the exercise of original jurisdiction, shall, unless a Judge of the said Court otherwise orders, be delivered to the Superintendent for intermediate custody, and shall be brought before the said Court or a Judge thereof, at the next sitting of the said Court or of a Judge thereof, for the exercise of original jurisdiction, in order that such person may be dealt with according to law;

and the said Court or Judge shall have power to make or award all necessary orders or warrants for that purpose.

Warrants under Regulations for confinement of State Prisoners.

15. Any warrant of commitment under Regulation III. of 1818 of the Bengal Code (*for the confinement of State Prisoners*), Regulation II. of 1819 of the Madras Code (*for the confinement of State Prisoners*), and Regulation XXV. of 1827 of the Bombay Code (*for the confinement of State Prisoners, and for the Attachment of the Lands of Chieftains and others for Reasons of State*), may be directed to the Superintendent in the same manner as the same might have been directed to the Sheriff under Act No. XXXIV. of 1850 (*for the better Custody of State Prisoners*), and Act No. III. of 1858 (*to amend the law relating to the arrest and detention of State Prisoners*).

III.—Prisoners in the Mufassal.

Officers in charge of prisons may give effect to sentences of certain Courts.

16. Officers in charge of prisons situate outside the local limits of the ordinary original civil jurisdictions of the High Courts of Judicature at Fort William, Madras, and Bombay, shall be competent to give effect to any sentence or order or warrant for the detention of any person passed or issued by any Court or tribunal acting under the authority of Her Majesty, or of the Governor-General in Council, or of any Local Government.

Warrant of officer of such Court to be sufficient authority.

17. A warrant under the official signature of an officer of such Court or tribunal shall be sufficient authority for holding any prisoner in confinement, or for sending any prisoner for transportation beyond sea, in pursuance of the sentence passed upon him.

Procedure where jailor doubts the legality of warrant sent to him for execution.

18. Any officer in charge of a prison doubting the legality of any warrant sent to him for execution under this part, or the competency of the person whose official seal and signature are affixed thereto to pass the sentence and issue such warrant, shall refer the matter to the Local Government, by whose order on the case such officer and all other public officers shall be guided as to the future disposal of the prisoner.

Pending any such reference, the prisoner shall be detained in such manner and with such restrictions or mitigations as may be specified in the warrant.

Imprisonment in British India of persons convicted of certain offences in Native States.

19. The Local Government may authorize the reception, detention, or imprisonment in any place under such Government, for the periods specified in their respective sentences, of persons sentenced within the territories of any Native Prince or State in alliance with Her Majesty to imprisonment or transportation for any of the following offences:—

counterfeiting coin,

uttering counterfeit coin,
murder,
culpable homicide not amounting to murder,
being a thug,
voluntarily causing grievous hurt,
administering poison,
kidnapping,
selling minors for purposes of prostitution,
rape,
robbery,
dacoity,
dacoity with murder,
robbery or dacoity with attempt to cause death or grievous hurt,
attempt to commit robbery or dacoity when armed with a deadly weapon,
making preparation to commit dacoity,
belonging to a gang of dacoits,
dishonest misappropriation of property,
breach of trust,
house-burning,
house-breaking,
forgery, and
theft of cattle;

or for an attempt to commit any of the above offences,

or for abetment, within the meaning of the Indian Penal Code, of suicide by burning or burying alive, or of any of the other offences above specified,

or for such other offences as the Governor-General in Council, from time to time, by order published in the *Gazette of India*, thinks fit to prescribe:

Proviso.

Provided that such sentences have been pronounced after trial before a tribunal in which an officer of Government, duly authorized in that behalf by such Native Prince or State, or by the Governor-General in Council, is one of the presiding Judges.

Certificate of conviction. Copy of proceedings.

20. *Every officer of* Government so authorized as aforesaid shall forward with every prisoner a certificate of his conviction, and a copy of the proceedings held at the trial, that the same may be forthcoming for reference at the place where the sentence of imprisonment or transportation is carried into effect.

IV.—Convicts Sentenced to Penal Servitude.

Persons sentenced to penal servitude where sent, and how dealt with.

21. Every person sentenced to be kept in penal servitude may, during the term of the sentence, be confined in such prison within British India as the Governor-General in Council, by general order, from time to time directs;

and may, during such time, be kept to hard labour;

Act V. of 1871.

and may, until he can conveniently be removed to such prison, be imprisoned with or without hard labour, and dealt with in all other respects as persons sentenced by the convicting Court to rigorous imprisonment may, for the time being, by law be dealt with.

Intermediate imprisonment.

The time of such intermediate imprisonment, and the time of removal from one prison to another, shall be taken and reckoned in discharge or part discharge of the term of the sentence.

Time of intermediate imprisonment to count in discharge of sentence.

22. All Acts and Regulations now in force within British India, with respect to convicts under sentence of transportation, or under sentence of imprisonment with hard labour, shall, so far as may be consistent with the express provisions of this Act, be construed to apply to persons under any sentence of penal servitude.

Law respecting convicts sentenced to transportation or imprisonment with hard labour applied to persons sentenced to penal servitude.

23. The Governor-General in Council may grant to any convict sentenced to be kept in penal servitude a license to be at large within British India or in such part thereof as in such license is expressed, during such portion of his term of servitude, and upon such conditions as to the Governor-General in Council seem fit.

Power to grant license to convict sentenced to penal servitude.

The Governor-General in Council may at any time revoke or alter such license.

24. So long as such license continues in force and unrevoked, such convict shall not be liable to imprisonment or penal servitude by reason of his sentence, but shall be allowed to go and remain at large according to the terms of such license.

Holder of license to be allowed to go at large.

25. In case of the revocation of any such license as aforesaid, any Secretary to the Government of India may, by order in writing, signify to any Justice of the Peace or Magistrate that such license has been revoked, and require him to issue a warrant for the apprehension of the convict to whom such license was granted, and such Justice or Magistrate shall issue his warrant accordingly.

Apprehension of convict where license revoked.

26. Such warrant may be executed by any officer to whom it may be directed or delivered for that purpose in any part of British India, and shall have the same force in any place within British India as if it had been originally issued or subsequently endorsed by the Justice of the Peace, or Magistrate, or other authority having jurisdiction in the place where the same is executed.

Execution of warrant.

27. The convict, when apprehended under such warrant, shall be brought, as soon as conveniently may be, before the Justice or Magistrate by whom it has been issued, or before some other Justice or Magistrate of the same place, or before a Justice or Magistrate having jurisdiction in the district in which the convict is apprehended.

Apprehended convict to be brought up for re-commitment.

Such Justice or Magistrate shall thereupon make out his warrant, under his hand and seal, for the re-commitment of the convict to the prison from which he was released by virtue of the said license.

28. Such convict shall be re-committed accordingly, and shall thereupon be liable to be kept in penal servitude for such further term as, with the time during which he may have been imprisoned under the original sentence, and the time during which he may have been at large under an unrevoked license, is equal to the term mentioned in the original sentence.

Re-commitment.

29. If a license be granted under section 23 upon any condition specified therein, and the convict to whom the license is granted violates any such condition,

Penalty for breach of condition of the license.

or goes beyond the limits specified in the license,

or, knowing of the revocation of such license, neglects forthwith to surrender himself, or conceals himself, or endeavours to avoid being apprehended,

he shall be liable, upon conviction to be sentenced to penal servitude for a term not exceeding the full term of penal servitude mentioned in the original sentence.

V.—Removal of Prisoners.

30.* When any person is, or has been, sentenced to imprisonment by any Court, or, in default of giving security for keeping the peace or maintaining good behaviour, has been committed to, or is detained in, prison under section 123 of the Code of Criminal Procedure, 1882, the Local Government, or (subject to its orders and under its control) the Inspector-General of Prisons, may order his removal during the period for which he has been sentenced to imprisonment, or the security has been ordered to be given, as the case may be, from the jail or place in which he is confined to any other jail or place of imprisonment within the territories subject to the same Local Government.

Removing from one jail to another in territories under same Local Government.

31.* (*1*) Whenever it appears to the Local Government that any person detained or imprisoned under any order or sentence of any Magistrate or Court is of unsound mind, that Government, by a warrant setting forth the grounds of belief that the person is of unsound mind, may order his removal to a lunatic asylum or other place of safe custody within the territories subject to the same Local Government, there to be kept and treated as the Local Government directs during the remainder of the term for which he has been ordered or sentenced to be detained or imprisoned, or, if on the expiration of that term it is certified by a medical officer that it is necessary for the safety of the prisoner or others that he should be further detained under medical care or treatment, then until he is discharged according to law.

Removal of lunatic prisoners.

(*2*) When it appears to the Local Government that the prisoner has become of sound mind, that Government, by a warrant directed to the person having charge of the prisoner, shall, if the prisoner is still liable to be kept in custody, remand him to the prison from which he was removed, or to another prison within the territories subject to the same Local Government, or, if the prisoner is no longer liable to be kept in custody, order him to be discharged.

(*3*) The provisions of section 9 of Act XXXVI. of 1858 (*relating to Lunatic Asylums*) shall apply to every person confined in a lunatic asylum under sub-section (*1*) after the expiration of the term for which he was ordered or sentenced to be detained or imprisoned; and the time during which a prisoner

* Ss. 30, 31, and 32 have been substituted by Act X. of 1886, s. 25, for those originally enacted.

Act V. of 1871.

is confined in a lunatic asylum under that sub-section shall be reckoned as part of the term of detention or imprisonment which he may have been ordered or sentenced by the Magistrate or Court to undergo.

(4) In any case in which a Local Government is competent under sub-section (1) to order the removal of a prisoner to a lunatic asylum or other place of safe custody within the territories subject to the same Local Government, the Governor-General in Council may order his removal to any lunatic asylum or other place of safe custody in any part of British India; and the provisions of this section respecting the custody, detention, remand, and discharge of a prisoner removed by order of a Local Government shall, so far as they can be made applicable, apply to a prisoner removed by order of the Governor-General in Council.

Removal of prisoners from territories under one Local Government to territories under another.

32.* When any person is, or has been, sentenced to imprisonment by any Court, or, in default of giving security for maintaining good behaviour, has been committed to, or is detained in, prison, under section 123 of the Code of Criminal Procedure, 1882, the Governor-General in Council may order his removal during the period for which he has been sentenced to imprisonment, or the security has been ordered to be given, as the case may be, from the jail or place in which he is confined to any other jail or place of imprisonment in British India.

VI.—Management of Transported Convicts.

Governor-General in Council to appoint places to which persons sentenced to transportation shall be sent.

33.† The Governor-General in Council may, from time to time, appoint places within British India to which persons sentenced to transportation shall be sent; and the Local Government, or some officer duly authorized in this behalf by the Local Government, shall give orders for the removal of such persons to the places so appointed, except when sentence of transportation is passed on a person already undergoing transportation under a sentence previously passed for another offence.

Local Government to direct removal of such persons to places appointed.

Power to make rules as to convicts.

34. The Governor-General in Council may, from time to time, prescribe rules as to the following matters:—

the classification of convicts;

their confinement, treatment, discipline, and employment;

their punishment for misbehaviour, disorderly conduct, neglect, or disobedience; and

the manner in which the proceeds (if any) of their employment shall be disposed of.

VII.—Discharge of Convicts.

Discharge of convicts recommended for pardon.

35. Any Court established under the twenty-fourth and twenty-fifth of Victoria, chapter one hundred and four, may, in any case in which it has recommended to Her Majesty the granting of a free pardon to any convict, permit him to be at liberty on his own recognizance.

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* Ss. 30, 31, and 32 have been substituted by Act X. of 1886, s. 25, for those originally enacted.

† S. 33 has been substituted by Act IX. of 1882 for the one originally enacted.

ACT XIX. OF 1871.*

RECEIVED THE G.-G.'S ASSENT ON THE 12TH MAY 1871.

An Act to provide for the appointment of Sessions Judges in Bengal and the North-Western Provinces.

Preamble.

WHEREAS it is expedient to provide for the appointment of Sessions Judges in the territories respectively under the Governments of the Lieutenant-Governors of the Lower and North-Western Provinces of the Presidency of Fort William in Bengal; It is hereby enacted as follows :—

1 to **6**. [*Repealed by Act X. of 1872*]

Indemnity-clause.

7. No judgment heretofore given, order passed, or proceeding had before any person who at any time has been appointed a Sessions Judge or Additional Sessions Judge, or who has been empowered to act as such in Bengal or the North-Western Provinces, shall be deemed to be or to have been invalid, and no suit shall lie in any Court in respect of any such judgment, order, or proceeding merely on the ground that such Sessions Judge or Additional Sessions Judge or person empowered to act as such was not appointed or empowered in conformity to law.

ACT XXI. OF 1871.

RECEIVED THE G.-G.'S ASSENT ON THE 11TH JULY 1871.

An Act to give validity to the operation of the General Regulations and Acts within the Dehrá Dun.

Preamble.

WHEREAS it is necessary to give validity to the operation of the general Regulations and Acts within the district under the Superintendent of the Dehrá Dun ;† It is hereby enacted as follows :—

Extension of Regulations and Acts in force in Sahá-ranpur to Dehrá Dun.

1. The Regulations and Acts now in force in the district of Saháranpur are hereby declared to extend to the said district of Dehrá Dun.‡

Jurisdiction of High Court and Board of Revenue, North-Western Provinces, over Dehrá Dun.

2. The High Court and the Board of Revenue of the North-Western Provinces shall exercise,‡ respectively, in the said district, all the powers which the said High Court or Board of Revenue are at present respectively authorized to exercise in any part of the North-Western Provinces.

District Court of Sahára-pur deemed District Court of Dehrá Dun.

3. The District Court of Saháranpur† shall be the District Court of such district until the Local Government otherwise directs ‡

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* Under s. 3 of the Scheduled Districts Act (XIV. of 1874), Act XIX. of 1871 has been declared in force in the Districts of Hazáribagh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán.

† Here certain words, repealed by Act XVI. of 1874, have been omitted.

‡ Here certain words, repealed by Act XII. of 1891, Sch. I., have been omitted.

Act XXII. of 1871.

Exemption of Jaunsár Bawár.

4. Nothing in this Act shall apply to that portion of the Dehrá Dun district called Jaunsár Bawár.*

ACT XXII. OF 1871†.

RECEIVED THE G.-G.'S ASSENT ON THE 1ST AUGUST 1871.

An Act to authorize the extension of the Chaukidári Act to places where there is no Jamadár of Police.

Preamble.

WHEREAS by Act No. XX. of 1856 (*to make better provision for the appointment and maintenance of Police Chaukidárs in Cities, Towns, Stations, Suburbs, and Bazárs in the Presidency of Fort William in Bengal*), section two, the Local Government is restrained from extending that Act to any City, Town, Suburb, or Bazár, unless there be therein (or in some other City, Town, Suburb, or Bazár with which the same may be united as thereinafter provided) a police-station under an officer of a grade not below that of a Jamadár; and whereas it is expedient to remove such restriction and in other respects to amend the said Act; It is hereby enacted as follows :—

Amendment of section two, Act No. XX. of 1856.

1. Instead of the 2nd section of the said Act, the following shall be read :—

[*Printed supra, p. 181.*]

Amendment of section eleven.

2. Instead of section 11 of the said Act, the following shall be read :—

[*Printed supra, p. 182.*]

Amendment of section 38.

3. Instead of section 38 of the said Act, the following shall be read :—

[*Printed supra, p. 186.*]

Amendment of section 41.

4. In the 41st section of the said Act, instead of the words "on the 20th of each calendar month," there shall be read the words "on the tenth day after the date fixed for the payment of instalments of the tax."

5. [*Repealed by Act XII. of 1891, Sch. I.*]

Construction. Exemption of Bengal from operation of Act.

6 ‡ This Act shall be read with, and taken as part of, the said Act XX. of 1856.*

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* Here certain words, repealed by Act XII. of 1891, Sch. I., have been omitted.

† Act XXII. of 1871 has been declared, by notification under the Scheduled Districts Act (XIV. of 1874), to be in force in the scheduled portion of the Mirzápur District and in Jaunsar Bawár, and extended, by notification under the same Act, to Kumáon and Garhwál and the Tarái Parganas. For declaration as to Act XXII. of 1871 being in force in Oudh, see Act XVIII. of 1876, s. 3 (*e*)

‡ In Oudh s. 6 is repealed.—See Act XVIII. of 1876, Sch. II.

ACT XXIII. OF 1871.*

Act XXIII. of 1871.

RECEIVED THE G.-G.'S ASSENT ON THE 8TH AUGUST 1871.

An Act to consolidate and amend the law relating to pensions and grants by Government of money or land-revenue.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to pensions and grants by Government of money or land-revenue; It is hereby enacted as follows:—

I.—Preliminary.

Short title.

1. This Act may be called "The Pensions Act, 1871;"

Extent of Act.

It extends to the whole of British India;†

Commencement.

And it shall come into force on the date of the passing thereof.‡

Enactments repealed.

2. The enactments mentioned in the schedule hereto annexed shall be repealed to the extent specified in the third column of the said schedule

Saving of rules.

But all rules in regard to the award and payment of pensions or grants of money or land-revenue, and the identification of the persons entitled to receive them, made under any such enactment, shall be deemed to have been made under this Act so far as they are consistent therewith.

Interpretation-clause.

3. In this Act, the expression "grant of money or land-revenue" includes anything payable on the part of Government in respect of any right, privilege, perquisite, or office.§

II.—Rights to Pensions.

Bar of suits relating to pensions.

4.‖ Except as hereinafter provided, no Civil Court shall entertain any suit relating to any pension or grant of money or land-revenue conferred or made by the British or

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* Act XXIII. of 1871 has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886.

It is included in the Schedule to the Santál Parganas Laws Regulation, III. of 1886.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum.—See *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504.

The Act applies to certain allowances known as the Oudh Wasikas as if they were pensions of the classes referred to in sections 4 and 11 of the Act.—See Act XXI. of 1886, s. 2.

† It has also been applied to the Haidarabad Assigned Districts, *Gazette of India*, 9th December 1871, p. 951, and (with modifications) to Mysore, *Gazette of India*, 23rd August 1873, p. 759.

‡ Here certain words, repealed by Act XII. of 1891, Sch. I., have been omitted.

§ 23 Suth. W. R., C. R., 378.

‖ According to s. 2 of the Oudh Wasikas Act (XXI. of 1886), "the allowances respectively known as the Amanat Wasikas, the Zamanat Wasikas, and the Loan Wasikas, are pensions within the meaning of the Pensions Act (XXIII. of 1871), and that Act shall apply to them, as if they were pensions of the classes referred to in ss. 4 and 11 of that Act."

Act XXIII. of 1871.

any former Government, whatever may have been the consideration for any such pension or grant, and whatever may have been the nature of the payment, claim, or right for which such pension or grant may have been substituted.

Claims to be made to Collector or other authorized officer.

5. Any person having a claim relating to any such pension or grant may prefer such claim to the Collector of the District, or Deputy Commissioner, or other officer authorized in this behalf by the Local Government, and such Collector, Deputy Commissioner, or other officer shall dispose of such claim in accordance with such rules as the Chief Revenue Authority may, subject to the general control of the Local Government, from time to time prescribe in this behalf.

Civil Court empowered to take cognizance of such claims.

6. A Civil Court, otherwise competent to try the same, shall take cognizance of any such claim upon receiving a certificate from such Collector, Deputy Commissioner, or other officer authorized in that behalf that the case may be so tried, but shall not make any order or decree in any suit whatever by which the liability of Government to pay any such pension or grant as aforesaid is affected directly or indirectly.

7. Nothing in sections 4 and 6 applies to—

(1) any inám of the class referred to in the first section of Madras Act No. IV. of 1862.* .

Pensions for lands held under grants in perpetuity.

(2) pensions heretofore granted by Government in the territories respectively subject to the Lieutenant-Governors of Bengal and the North-Western Provinces, either wholly or in part as an indemnity for loss sustained by the resumption by a Native Government of lands held under sanads purporting to confer a right in perpetuity. Such pensions shall not be liable to resumption on the death of the recipient, but every such pension shall be capable of alienation and descent, and may be used for and recovered in the same manner as any other property.

III.—Mode of payment.

Payment to be made by Collector or other authorized officer.

8. All pensions or grants by Government of money or land-revenue shall be paid by the Collector or the Deputy Commissioner or other authorized officer, subject to such rules as may, from time to time, be prescribed by the Chief Controlling Revenue Authority.

Saving of rights of grantees of land revenue

9. Nothing in sections four and eight shall affect the right of a grantee of land-revenue, whose claim to such grant is admitted by Government, to recover such revenue from the persons liable to pay the same under any law for the time being in force for the recovery of the rent of land.

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* *I. e.*, "ináms of the classes described in clause 1, section 2 [Mad.] Regulation IV. of 1831, which have been or shall be enfranchised by the Inám Commissioner, and converted into freeholds in perpetuity, or into absolute freeholds in perpetuity." The classes so described are "hereditary or personal grants of money or of land-revenue, however denominated, conferred by the authority of the Governor in Council [or which having been made by any Native Government have been confirmed or continued by the British Government—Act No. XXXI. of 1836] in consideration of services rendered to the State, or in lieu of resumed offices or privileges, or of zamindáris or paleiyams forfeited or held under attachment or management by the officers of Government, or as a yaumia or charitable allowance, or as a pension."

10. The Local Government may, with the consent of the holder, order the whole or any part of his pension or grant of money or land-revenue to be commuted for a lump sum on such terms as may seem fit.

Commutation of pensions.

IV.—Miscellaneous.

11.* No pension granted or continued by Government on political considerations, or on account of past services or present infirmities, or as a compassionate allowance,

Exemption of pension from attachment.

and no money due or to become due on account of any such pension or allowance,

shall be liable to seizure, attachment, or sequestration by process of any Court in British India, at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any such Court.

12. All assignments, agreements, orders, sales, and securities of every kind made by the person entitled to any pension, pay, or allowance mentioned in section eleven, in respect of any money not payable at or before the making thereof, on account of any such pension, pay, or allowance, or for giving or assigning any future interest therein, are null and void.

Assignments, &c., in anticipation of pension, to be void.

13. Whoever proves to the satisfaction of the Local Government that any pension is fraudulently or unduly received by the person enjoying the benefit thereof, shall be entitled to a reward equivalent to the amount of such pension for the period of six months.

Reward to informers.

14. The Chief Controlling Revenue Authority may, with the consent of the Local Government, from time to time, make rules consistent with this Act respecting all or any of the following matters :—

Power to make rules.

(1) the place and times at which, and the person to whom, any pension shall be paid,

(2) inquiries into the identity of claimants,

(3) records to be kept on the subject of pensions,

(4) transmission of such records,

(5) correction of such records,

(6) delivery of certificates to pensioners,

(7) registers of such certificates,

(8) reference to the Civil Court under section six, of persons claiming a right of succession to, or participation in, pensions or grants of money or land-revenue payable by Government,

and generally for the guidance of officers under this Act.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.†

† See the Bengal rules, *Calcutta Gazette*, 15th September 1875, p. 1144: Madras rules, *Fort St. George Gazette*, 3rd August 1875, p. 1335: Bombay rules, *Bombay Government Gazette*, 7th August 1873, p. 656: Panjab rules, *Panjab Government Gazette*, 16th January 1873, p. 13, 30th October 1873, p. 627, 8th October 1874, p. 348: Oudh rules, *Oudh Government Gazette*, 19th October 1872, p. 68: Central Provinces rules, *Central Provinces Gazette*, 3rd July 1875, Part IA., p. 123. Rules, dated 28th May 1875, were made under this section, with the sanction of the Local Government, by the Board of Revenue, North-Western Provinces; but they have not been published in the *North-Western Provinces Gazette*.

Act XXVI. of 1870.

Power of gaoler as to visitors.

44. The gaoler may demand the name and address of any visitor to a prisoner; and, when the gaoler has any ground for suspicion, may search visitors, or cause them to be searched, but the search shall not be in the presence of any prisoner or of another visitor.

In case of any such visitor refusing to be searched, the gaoler may deny him admission; and the grounds of such proceeding, with the particulars thereof, shall be entered in his journal.

CHAPTER X.

OFFENCES IN RELATION TO PRISONS.

Carrying liquor, tobacco, or drugs into prison;

45. Whoever, contrary to the regulations of the prison, brings, throws, or attempts by any means whatever to introduce, into any prison, or any place provided under section 5 for the temporary shelter and safe custody of prisoners, any spirituous or fermented liquor, or tobacco, or intoxicating or poisonous drug;

suffering liquor, &c., to be sold or used in prison;

and every officer of a prison who knowingly suffers any such liquor, tobacco, or drug to be sold or used in such prison or place contrary to such regulations;

carrying letters into and out of prison;

and whoever, contrary to such regulations, conveys, or attempts to convey, any letter or other article not allowed by such regulations into or out of any such prison or place;

abetment of such offences;

and whoever abets, within the meaning of the Indian Penal Code, any offence made punishable by this section,

punishment for such offences.

shall, on conviction before a Magistrate, be liable to rigorous imprisonment for a term not exceeding six months, or to fine not exceeding two hundred rupees, or to both.

Notice of penalties to be placed outside prison.

46. The superintendent shall cause to be affixed, in a conspicuous place outside the prison or the place provided as aforesaid, a notice setting forth the penalties incurred by persons committing any offence under section 45.

CHAPTER XI.

PRISON OFFENCES.

List of prison-offences.

47. The following acts are declared to be offences against prison-discipline :—

(1) wilful disobedience to the regulations of the prison by any prisoner;

(2) assault* or use of criminal force by any prisoner;

(3) insulting or threatening language by any prisoner to any officer or prisoner;

(4) indecent or disorderly behaviour by any prisoner;

(5) wilfully disabling himself from labour;

* The word "assault" has been substituted for the word "assaults" by Act XII. of 1891.

II.—MADRAS REGULATIONS.

Number and year.	Title or subject.	Extent of repeal.
I. of 1803 ...	A Regulation for defining the Duties of the Board of Revenue, and for determining the Extent of the Powers vested in the Board of Revenue.	Section forty-three.
II. of 1803 ...	A Regulation for describing and determining the Conduct to be observed by Collectors in certain Cases.	Section thirty.
IV. of 1831 ...	A Regulation for better securing to the Grantees Personal or Hereditary Grants of Money or of Land Revenue, conferred by the Government in consideration of Service rendered to the State, or in lieu of resumed Offices or Privileges, or of Zamindáris, or Páleiyams forfeited or held under Attachment or Management by the Officers of Government, or as Yaumiás or Pensions.	The whole.

III.—BOMBAY REGULATION.

XXIX. of 1827 ...	A Regulation for bringing under the operation of the Regulations the Bombay Territories in the Dekkan and Khandesh.	Section six, clauses 2 & 3.

IV.—ACTS.

XXXI. of 1836 ...	Government Grants	The whole.
XXIII. of 1838 ...	Exemption of Grants from attachment ...	The whole.
VI. of 1849 ...	An Act for securing Military and Naval Pensions and Superannuation Allowances.	The whole.

Act XXVII. of 1871.

ACT XXVII. OF 1871.*

RECEIVED THE G.-G.'S ASSENT ON THE 12TH OCTOBER 1871.

An Act for the Registration of Criminal Tribes and Eunuchs.

Preamble.

WHEREAS it is expedient to provide for the registration, surveillance, and control of certain criminal tribes and eunuchs; It is hereby enacted as follows :—

Short title.

1. This Act may be called "The Criminal Tribes Act, 1871."

Commencement.

[*Repealed by Act XVI. of 1874, s. 1.*]

Local extent.

This section and section 20 extend to the whole of British India; the rest of this Act extends only to the territories under the governments of the Lieutenant-Governors of Bengal,† the North-Western Provinces, and the Panjab, respectively, and under the administration of the Chief Commissioner of Oudh.

PART I.

CRIMINAL TRIBES.

Local Government to report what tribes should be declared criminal.

2. If the Local Government has reason to believe that any tribe, gang, or class of persons, is addicted to the systematic commission of non-bailable offences, it may report the case to the Governor-General in Council, and may request his permission to declare such tribe, gang, or class, to be a criminal tribe.

Report to contain certain particulars.

3. The report shall state the reasons why such tribe, gang, or class, is considered to be addicted to the systematic commission of non-bailable offences, and, as far as possible, the nature and the circumstances of the offences in which the members of the tribe are supposed to have been concerned; and shall describe the manner in which it is proposed that such tribe, gang, or class, shall earn its living when the provisions hereinafter contained have been applied to it.

Occupation of wandering tribe, to be stated;

4. If such tribe, gang, or class, has no fixed place of residence, the report shall state whether such tribe, gang, or class, follows any lawful occupation, and whether such occupation is, in the opinion of the Local Government, the real occupation of such tribe, gang, or class, or a pretence for the purpose of facilitating the commission of crimes, and shall set forth the grounds on which such opinion is based; and

also proposed residence and means of livelihood.

the report shall also specify the place of residence in which such wandering tribe, gang, or class, is to be settled under the provisions hereinafter contained, and the arrangements which are proposed to be made for enabling it to earn its living therein.

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* Under s. 3 of the Scheduled Districts Act (XIV. of 1874), this Act has been declared in force in the Districts of Hazáribágh, Lohárdaga, and Mánbhum, Pargana Dhálbhum, and the Kolhán.

† The word "Bengal" in s. 1 has been inserted by Act VII. of 1876, s. 1.

5. If, upon the consideration of any such report, the Governor-General in Council is satisfied that the tribe, gang, or class to which it relates, ought to be declared criminal, and that the means by which it is proposed that such tribe, gang, or class, shall earn its living, are adequate, he may authorize the Local Government to publish in the local Gazette a notification declaring that such tribe, gang, or class, is a criminal tribe, and thereupon the provisions of this Act shall become applicable to such tribe, gang, or class.

Notification declaring tribe to be criminal.

6. No Court of Justice shall question the validity of any such notification, on the ground that the provisions hereinbefore contained, or any of them, have not been complied with; or entertain in any form whatever the question whether they have been complied with; but every such notification shall be conclusive proof that the provisions of this Act are applicable to the tribe, gang, or class, specified therein.

Bar of jurisdiction of Courts in questions relating to notification.

7. When the notification mentioned in section 5 has been published, the Local Government may direct the Magistrate of any district in which such tribe, gang, or class, or any part thereof, is at the time resident, to make a register of the members of such tribe, gang, or class, or of any part thereof.

Register of members of such tribes.

The declaration of the Local Government that any such tribe, gang, or class, or any part of it, is resident in any district, shall be conclusive proof of such residence.

8. Upon receiving such direction, the said Magistrate shall publish a notice in the place where the register is to be made, calling upon all the members of such tribe, gang, or class, or of such portion thereof as is directed to be registered, to appear, at a time and place therein specified, before such persons as he appoints, and to give those persons such information as may be necessary to enable them to make the register.

Procedure in making register.

9. Any member of any such tribe, gang, or class, who, without lawful excuse, the burthen of proving which shall lie upon him,—

Penalties for failing to appear, refusing, or giving false information.

shall fail to appear according to such notice,

or who shall intentionally omit to furnish such information,

or who shall furnish, as true, information on the subject which he knows or has reason to believe to be false,

shall be deemed guilty of an offence under the first part of section 174 or 176 or 177 of the Indian Penal Code, respectively, as the case may be.

10. The register, when made, shall be kept by the District Superintendent of Police, who shall, from time to time, report to the said Magistrate any alterations which ought to be made therein, either by way of addition or erasure.

Charge of register.
Reporting desirable alterations.

11. No alteration shall be made in such register except by or by order of the said Magistrate, and he shall write his initials against every such alteration. Notice shall be given of any such intended alteration, and of the time when, and place where, it is to be made, to every person affected thereby.

By whom alterations to be made.

Notice to persons affected.

Act XXVII. of 1871.

Complaints of entries in register.

12. Any person deeming himself aggrieved by any entry made, or proposed to be made, in such register, either when the register is first made or subsequently, may complain to the said Magistrate against such entry, and the Magistrate shall retain such person's name on the register, or enter it therein, or erase it therefrom, as he may see fit.

Every order for the erasure of any such person's name shall state the grounds on which such person's name is erased.

The Commissioner shall have power to review any order of entry, retention, or erasure, passed by the said Magistrate on any such complaint, either on appeal by the person registered, or proposed to be registered, or otherwise.

Settlement of tribe in place prescribed by Local Government.

13. Any tribe, gang, or class, which has been declared to be criminal, and which has no fixed place of residence, may be settled in a place of residence prescribed by the Local Government.

Removal to other place.

14. Any tribe, gang, or class, which has been declared to be criminal, or any part thereof, may, by order of the Local Government, be removed to any other place of residence.

Arrangements to be made prior to settlement or removal.

15. No tribe, gang, or class, shall be settled or removed under the provisions of this Act until such arrangements, as the Local Government shall, with the concurrence of the Governor-General in Council, consider suitable, have been made for enabling such tribe, gang, or class, or such part thereof as is to be so settled or removed, to earn a living in the place in or to which it is to be settled or removed.

Transfer of register of persons ordered to be removed.

16. When the removal of any persons has been ordered under this Act, the register of such persons' names shall be transferred to the District Superintendent of Police of the district to which such persons are removed; and the Magistrate of the said district, and the Commissioner of the division in which it is situated, shall thereupon be empowered to exercise respectively the powers provided in sections 11 and 12.

Power to place tribe in reformatory settlement.

17. The Local Government may, with the sanction of the Governor-General in Council, place any tribe, gang, or class, which has been declared to be criminal, or any part thereof, in a reformatory settlement.

Power to make rules.

18. The Local Government may with the previous consent of the Governor-General in Council, make rules to prescribe—

(1) the form in which the register shall be made by the said Magistrate;

(2) the mode in which the said Magistrate shall publish the notice prescribed in section 8, and the means by which the persons whom it concerns, and the headmen, village-watchmen, and landowners or occupiers of the village in which such persons reside, "or the agents of such landowners or occupiers,"* shall be informed of its publication;

(3) the mode in which the notice prescribed in section 11 shall be given;

* The words quoted have been inserted by Act VII. of 1876, s. 2.

(4) the limits within which persons whose names are on the register shall reside ;

(5) conditions as to holding passes under which such persons may be permitted to leave the said limits ;

(6) conditions to be inserted in any such pass as to—

(*a*) the places where the holder of the pass may go or reside;

(*b*) the officers before whom, from time to time, he shall be bound to present himself ;

(*c*) and the time during which he may absent himself ;

(7) conditions as to answering at roll-call or otherwise, in order to satisfy the said Magistrate or persons authorized by him that the persons whose names are on the register are actually present at given times within the said limits ;

(8) the inspection of the residences and villages of any such tribe, gang, or class, and the prevention or removal of contrivances for enabling the residents therein to conceal stolen property, or to leave their place of residence without leave ;

(9) the terms upon which registered persons may be discharged from the operation of this Act ;

(10) the mode in which criminal tribes shall be settled and removed ;

(11) the control and supervision of reformatory settlements ;

(12) the works on which, and the hours during which, persons placed in a reformatory settlement shall be employed, the rates at which they shall be paid, and the disposal, for the benefit of such persons, of the surplus proceeds of their labour after defraying the whole or such part of the expenses of their supervision and control as to the Local Government shall seem fit ;

(13) the discipline to which persons endeavouring to escape from any such settlement, or otherwise offending against the rules for the time being in force, shall be submitted ; the periodical visitation of such settlement, and the removal from it of such persons as it shall seem expedient to remove ;

(14) and generally to carry out the purposes of this Act.*

Penalties for breach of rules.

19. Any person violating any of the rules made under section 18 shall be punished with rigorous imprisonment for a term which may extend to six months, or with fine, or with whipping, or with all or any two of those punishments ; and, on any second conviction for a breach of any of the said rules, with rigorous imprisonment which may extend to one year, or with fine, or with whipping to be inflicted in the manner prescribed by any law in force for the time being in relation to whipping, or with all or any two of those punishments.

Arrest of registered person found beyond prescribed limits.

20. Any person registered under the provisions of this Act, who is found in any part of British India, beyond the limits so prescribed for his residence, without such pass as may be required by the said rules, or in a place, or at a time, not permitted by the conditions of his pass,

or who escapes from a reformatory settlement,

may be arrested without warrant by any police-officer or village-watchman, and taken before a Magistrate, who, on proof of the facts, shall order him to be

* N.-W. Provinces Rules, *N.-W. Provinces Gazette*, 21st March 1874, p. 701 : Panjáb Rules, *Panjáb Government Gazette*, 13th February 1873, p. 99.

Act XXVII. of 1871.

removed to the district in which he ought to have resided, or to the reformatory settlement from which he has escaped (as the case may be), there to be dealt with according to the rules under this Act for the time being in force.

The rules for the time being in force for the transmission of prisoners shall apply to all persons removed under this section: Provided that an order from the Local Government or from the Inspector-General of Prisons shall not be necessary for the removal of such persons.

Duties of village-headmen, village-watchmen, &c.

21. It shall be the duty of every village-headman and village-watchman in a village in which any persons belonging to a tribe, class, or gang which has been declared criminal, reside, and of every owner or occupier of land on which any such persons reside, "or of the agent of any such owner or occupier,"* to give the earliest information in his power at the nearest police-station of—

(1) the failure of any such person to appear and give information as directed in section 8;

(2) the departure of any such person from such village or from such land (as the case may be).

And it shall be the duty of every village-headman and village-watchman in a village, and of every owner or occupier of land, "or of the agent of such owner or occupier,"* to give the earliest information in his power at the nearest police-station of the arrival at such village or on such land (as the case may be) of any persons who may reasonably be suspected of belonging to any such tribe, class, or gang.

Penalty for breach of such duties.

22. Any village-headman, village-watchman, owner or occupier of land, "or the agent of such owner or occupier,"* who shall fail to comply with the requirements of section 21, shall be deemed to have committed an offence under the first part of section 176 of the Indian Penal Code.

Indemnity for past registrations and detentions.

23. [*Repealed by Act XII. of 1876, s. 1.*]

PART II.

EUNUCHS.

Register of eunuchs and their property.

24. The Local Government shall cause the following registers to be made and kept up by such officer as, from time to time, it appoints in this behalf:—

(*a*) a register of the names and residences of all eunuchs residing in any town or place to which the Local Government specially extends this Part of this Act, who are reasonably suspected of kidnapping or castrating children, or of committing offences under section 377 of the Indian Penal Code, or of abetting the commission of any of the said offences; and

(*b*) a register of the property of such of the said eunuchs as, under the provisions hereinafter contained, are required to furnish information as to their property.

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* The words quoted have been inserted by Act VII. of 1876, s. 2.

'Eunuch' defined.

The term 'eunuch' shall, for the purposes of this Act, be deemed to include all persons of the male sex who admit themselves, or on medical inspection clearly appear, to be impotent.

Complaints of entries in register.

25. Any person deeming himself aggrieved by any entry made or proposed to be made in such register, either when the register is first made or subsequently, may complain to the said officer, who shall enter such person's name or erase it, or retain it, as he sees fit.

Every order for erasure of such person's name shall state the grounds on which such person's name is erased.

The Commissioner shall have power to review any order passed by such officer on such complaint, either on appeal by the complainant or otherwise.

Penalty on registered eunuch appearing in female clothes,

26. Any eunuch so registered, who appears, dressed or ornamented like a woman, in a public street or place, or in any other place, with the intention of being seen from a public street or place,

or dancing in public, or for hire.

or who dances or plays music, or takes part in any public exhibition, in a public street or place, or for hire in a private house,

may be arrested without warrant, and shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Penalty on registered eunuch keeping boy under sixteen.

27. Any eunuch so registered, who has in his charge, or keeps in the house in which he resides, or under his control, any boy who has not completed the age of sixteen years, shall be punished with imprisonment for a term which may extend to two years, or with fine or with both.

Maintenance and education of boys whose parents cannot be found.

28. The Magistrate may direct that any such boy shall be returned to his parents or guardians, if they can be discovered. If they cannot be discovered, the Magistrate may make such arrangements as he thinks necessary for the maintenance and education of such boy, and may direct that the whole or any part of a fine inflicted under section 27 may be employed in defraying the cost of such arrangements.

The Local Government may direct out of what local or municipal fund so much of the cost of such arrangements as is not met by the fine imposed shall be defrayed.

Disabilities of registered eunuchs.

29. No eunuch so registered shall be capable—

(*a*) of being or acting as guardian to any minor,

(*b*) of making a gift,

(*c*) of making a will, or

(*d*) of adopting a son.

Power to require information as to registered eunuch's property.

30. Any officer authorized by the Local Government in this behalf may, from time to time, require any eunuch so registered to furnish information as to all property, whether moveable or immoveable, of or to which he is possessed or entitled, or which is held in trust for him.

Act XXXI. of 1871.

Penalty for refusing such information.

Any such eunuch intentionally omitting to furnish such information, or furnishing, as true, information on the subject which he knows, or has reason to believe, to be false, shall be deemed to have committed an offence under section 176 or 177 of the Indian Penal Code, as the case may be.

Rules for making and keeping up registers of eunuchs.

31. The Local Government may, with the previous sanction of the Governor-General in Council, make rules for the making and keeping up and charge of registers made under this Part of the Act.*

ACT XXXI. OF 1871.

INDIAN WEIGHTS AND MEASURES OF CAPACITY ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 30TH OCTOBER 1871.

An Act to regulate the Weights and Measures of Capacity of British India.

Preamble.

WHEREAS it is expedient to provide for the ultimate adoption of an uniform system of Weights and Measures of Capacity throughout British India; It is hereby enacted as follows:—

I.—Preliminary.

Short title. Local extent.

1. This Act may be called "The Indian Weights and Measures of Capacity Act, 1871," and extends to the whole of British India.

II.—Standards.

Standard of Weight.

2. The primary standard of weight shall be called a ser, and shall be a weight of metal in the possession of the Government of India, equal, when weighed in a vacuum, to the weight known in France as the Kilogramme des Archives.

Units of weights and measures of capacity.

3. The units of weight and of measures of capacity shall be—

for weights, the said ser;

for measures of capacity, a measure containing one such ser of water at its maximum density, weighed in a vacuum.

Special weights and measures of capacity may be authorized.

4. The Governor-General in Council may, from time to time, by notification in the *Gazette of India*,† declare the magnitude and denominations of the weights and measures of capacity, other than the said units to be authorized under this Act:

Provided that every such weight or measure of capacity shall be an integral multiple or integral sub-multiple of one of the units aforesaid.

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* N.-W. Provinces Rules, *N.-W. Provinces Gazette*, 20th July 1872, p. 845: Panjáb Rules, *Panjáb Government Gazette*, 12th June 1873, p. 331.

† No Notifications have as yet been issued under this or any of the other sections of this Act.

The Governor-General in Council may, in like manner, revoke such notification.

Unless it be otherwise ordered in any such notification, the sub-divisions of all such weights and measures of capacity shall be expressed in decimal parts.

Districts how defined.

5. The Governor-General in Council may, from time to time, by notification in the *Gazette of India*, define the limits of districts for the purposes of this Act.

Sub-districts how defined.

The Local Government may, from time to time, by notification in the official Gazette, define the limits of sub-districts for the purposes of this Act.

Primary standards to be provided.

6. The Governor-General in Council may provide, for such districts as he thinks fit, proper primary standards and sets of the said authorized weights and measures of capacity.

Such standards shall, for the purposes of this Act, be deemed the standards for such districts.

Local standards to be provided.

7. The Local Government may provide, for such sub-districts as it thinks fit, copies of such of the said authorized weights and measures of capacity as shall be necessary to serve as local standards in such sub-districts.

Such local standards shall be deemed correct, until they are proved to be otherwise.

III.—Use of new Weights and Measures of Capacity.

Use of new weights and measures of capacity in Government offices, &c.

8. Whenever the Governor-General in Council considers that proper standard weights and measures of capacity have been made available for the verification of the weights and measures of capacity to be used by any Government office or municipal body or railway company, the Governor-General in Council may, by notification in the *Gazette of India*, direct that after a date to be fixed therein, all or any of the weights and measures of capacity, authorized as aforesaid, shall be used in dealings and contracts by such office, body, or company ; and may, in like manner, from time to time, alter or revoke such direction.

Contracts by weight or measure of capacity.

9. After the date fixed in any notification under section eight, all dealings and contracts had and made by the officers, bodies, or companies, mentioned in such notification, for any work to be done or goods to be sold or delivered by weight or measure of capacity, shall, in the absence of a special agreement to the contrary, be deemed to be had and made according to the weights or measures of capacity directed in such notification to be used by such officers, bodies, or companies.

IV.—Wardens.

Appointment of Wardens.

10. The Governor-General in Council and the Local Government, respectively, shall appoint Wardens for the custody of the primary and local standards and sets of authorized Weights and Measures of Capacity hereinbefore mentioned.

Act XXXI. of 1871.

The Governor-General in Council or the Local Government, respectively, may, at any time, suspend or remove any such Warden, and appoint another.

Powers to make rules.

11. The Governor-General in Council may, from time to time, make rules consistent with this Act for regulating the following matters:—

(*a*)—The appointment of Wardens;

(*b*)—The guidance of Wardens in all matters connected with the performance of their duties;

(*c*)—The provision, replacement, custody, and use of the standards;

(*d*)—The method of verifying local standards and weights, weighing machines, and measures of capacity authorized under this Act, and balances, and of certifying such verification; provided that such verification shall not be required to be made oftener than once in two years;

(*e*)—The errors which may be tolerated in weights, weighing machines, and measures of capacity authorized under this Act, and in balances;

(*f*)—The shapes, proportions, and dimensions to be given to weights, weighing machines, and measures of capacity authorized under this Act, and to balances, and the materials of which they may be made;

(*g*)—Marking weights and measures of capacity authorized under this Act with their several denominations;

(*h*)—The conditions under which Government offices, municipal bodies, and railway companies, shall be subject to inspection and verification of the weights, weighing machines, and measures of capacity authorized under this Act, and of the balances used by them;

(*i*)—The fees to be paid for verifying, correcting, and certifying the verification of weights, weighing machines, and measures of capacity authorized under this Act, and of balances.

Publication of rules.

12. Such rules shall be published in the *Gazette of India*.

Rules, when specially applied, to have force of law.

And the Governor-General in Council may, by notification in the *Gazette of India*, declare that, from and after a day to be named therein, all or any of the said rules shall come into force in respect of any Government office, municipal body, or railway company, and thereupon, to the extent specified in such notification, such rules or rule shall have the force of law.

Officers of Government and others to comply with rules.

13. All officers of Government, municipal officers, and officers and servants of railway companies, shall comply with such rules so far as they concern them, and pay such fees as the said rules shall prescribe.

Warden may refuse to verify or correct things unfit.

14. The Warden may deface, or render incapable of use, or refuse to verify, correct, or mark, anything brought to him for verification or correction, which appears to him unfit for verification or correction.

Exercise of any of Warden's powers.

15. Any of the powers and duties conferred and imposed by this Act on a Warden may be exercised and performed by any other officer whom the Local Government may, from time to time, appoint.

Counterfeiting Warden's marks.

16. Whoever knowingly counterfeits any mark used by a Warden under section eleven, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

Tables of equivalents.

17. The Local Government may, from time to time, prepare tables of the equivalents of weights and measures of capacity, other than those authorized under this Act, in terms of the weights and measures of capacity so authorized, and the equivalents so stated, after notification in the local official Gazette, shall be deemed the true equivalents.

ACT I. OF 1872.*

THE INDIAN EVIDENCE ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 15TH MARCH 1872.

Preamble.

WHEREAS it is expedient to consolidate, define, and amend the Law of Evidence; It is hereby enacted as follows :—

PART I.—RELEVANCY OF FACTS.

CHAPTER I.—PRELIMINARY.

Short title.

1. This Act may be called "The Indian Evidence Act, 1872 :"

Extent.

It extends to the whole of British India, and applies to all judicial proceedings in or before any Court, including Courts-martial,† but not to affidavits presented to any Court or officer, nor to proceedings before an arbitrator ;

Commencement of Act.

and it shall come into force on the first day of September 1872.

Repeal of enactments.

2. On and from that day the following laws shall be repealed :—

(1) All rules of evidence not contained in any Statute, Act, or Regulation in force in any part of British India ;

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* Act I. of 1872 has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1866.

It is included in the Schedule to the Santal Parganas Laws Regulation, III. of 1886.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum . . .	See *Gazette of India*	Oct. 22, 1881, Pt. I., p. 504.
The North-Western Provinces Tarái	Ditto	Sep. 23, 1876, Pt. I., p. 505.

† This was repealed, as to European Courts-martial, by the Mutiny Act, 1875 (38 Vic., c. 7), s. 101, which enacted as follows : "No Court-martial shall, in respect of the conduct of its proceedings, or the reception or rejection of evidence, be subject to the provisions of the 'Indian Evidence Act, 1872,' or any Act of any Legislature, other than the Parliament of the United Kingdom."—A similar clause has been enacted in the Army Act, 1881 (44 and 45 Vic., c. 58), s. 127, which has now taken the place of the Mutiny Act (38 Vic., c. 7), s. 101.

Act I. of 1872.

(2) All such rules, laws, and regulations as have acquired the force of law under the twenty-fifth section of "The Indian Councils Act, 1861," in so far as they relate to any matter herein provided for ; and

(3) The enactments mentioned in the schedule hereto, to the extent specified in the third column of the said schedule.

But nothing herein contained shall be deemed to affect any provision of any Statute, Act, or Regulation in force in any part of British India, and not hereby expressly repealed.

Interpretation-clause.

3. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context :—

"Court."

"Court" includes all Judges and Magistrates, and all persons, except arbitrators, legally authorized to take evidence.

"Fact."

"Fact" means and includes—

(1) any thing, state of things, or relation of things, capable of being perceived by the senses.

(2) any mental condition of which any person is conscious.

Illustrations.

(*a.*) That there are certain objects arranged in a certain order in a certain place, is a fact.

(*b.*) That a man heard or saw something, is a fact.

(*c.*) That a man said certain words, is a fact.

(*d.*) That a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.

(*e.*) That a man has a certain reputation, is a fact.

"Relevant."

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

"Facts in issue."

The expression "facts in issue" means and includes—

any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature, or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

Explanation.—Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue.

Illustration.

A is accused of the murder of B.

At his trial the following facts may be in issue :—

That A caused B's death ;

That A intended to cause B's death ;

That A had received grave and sudden provocation from B ;

That A, at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature.

"Document" means any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

"Document."

Illustrations.

A writing is a document:

Words printed, lithographed, or photographed are documents:

A map or plan is a document:

An inscription on a metal plate or stone is a document:

A caricature is a document.

"Evidence." "Evidence" means and includes—

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under enquiry;

such statements are called oral evidence;

(2) all documents produced for the inspection of the Court;

such documents are called documentary evidence.

"Proved." A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

"Disproved." A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

"Not proved." A fact is said not to be proved when it is neither proved nor disproved.

4. Whenever it is provided by this Act that the Court may presume a fact,

"May presume." it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it:

"Shall presume." Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.

"Conclusive proof." When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

CHAPTER II.—OF THE RELEVANCY OF FACTS.

5. Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.

Evidence may be given of facts in issue and relevant facts.

Explanation.—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.*

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* See now Act XIV. of 1882.

Act I. of 1872.

Illustrations.

(*a*.) A is tried for the murder of B by beating him with a club with the intention of causing his death.

At A's trial the following facts are in issue:—

A's beating B with the club;

A's causing B's death by such beating;

A's intention to cause B's death.

(*b*.) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.

Relevancy of facts forming part of same transaction.

6. Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant whether they occurred at the same time and place, or at different times and places.

Illustrations.

(*a*.) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the bystanders at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(*b*.) A is accused of waging war against the Queen by taking part in an armed insurrection in which property is destroyed, troops are attacked, and gaols are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.

(*c*.) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(*d*.) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

Facts which are occasion, cause, or effect of facts in issue.

7. Facts which are the occasion, cause, or effect, immediate or otherwise, of relevant facts or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Illustrations.

(*a*.) The question is, whether A robbed B.

The facts, that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it, or mentioned the fact that he had it, to third persons, are relevant.

(*b*.) The question is, whether A murdered B.

Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.

(*c*.) The question is, whether A poisoned B.

The state of B's health before the symptoms ascribed to poison, and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

Motive, preparation, and previous or subsequent conduct.

8 Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person, an offence

against whom is the subject of any proceeding, is relevant, if such conduct influences, or is influenced by, any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1.—The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Illustrations.

(*a.*) A is tried for the murder of B.

The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(*b.*) A sues B upon a bond for the payment of money. B denies the making of the bond.

The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

(*c.*) A is tried for the murder of B by poison.

The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(*d.*) The question is, whether a certain document is the will of A.

The facts that, not long before the date of the alleged will, A made inquiry into matters to which the provisions of the alleged will relate, that he consulted vakils in reference to making the will, and that he caused drafts of other wills to be prepared, of which he did not approve, are relevant.

(*e*) A is accused of a crime.

The facts that, either before, or at the time of, or after, the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence, or procured the absence, of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(*f.*) The question is, whether A robbed B.

The facts, that, after B was robbed, C said in A's presence, 'The Police are coming to look for the man who robbed B,' and that immediately afterwards A ran away, are relevant.

(*g.*) The question is, whether A owes B rupees 10,000.

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing, 'I advise you not to trust A, for he owes B 10,000 rupees,' and that A went away without making any answer, are relevant facts.

(*h.*) The question is, whether A committed a crime.

The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.

(*i.*) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(*j.*) The question is, whether A was ravished.

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that, without making a complaint, she said that she had been ravished, is not relevant as conduct under this section, though it may be relevant—

Act I. of 1872.

as a dying declaration under section 32, clause (1), or

as corroborative evidence under section 157.

(*k*.) The question is, whether A was robbed.

The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that he said he had been robbed without making any complaint, is not relevant as conduct under this section, though it may be relevant—

as a dying declaration under section 32, clause (1), or

as corroborative evidence under section 157.

Facts necessary to explain or introduce relevant facts.

9. Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Illustrations.

(*a*) The question is, whether a given document is the will of A.

The state of A's property and of his family at the date of the alleged will may be relevant facts.

(*b*.) A sues B for a libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libellous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(*c*.) A is accused of a crime.

The fact that, soon after the commission of the crime, A absconded from his house, is relevant, under section 8, as conduct subsequent to, and affected by, facts in issue.

The fact, that, at the time when he left home, he had sudden and urgent business at the place to which he went, is relevant, as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(*d*.) A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service, says to A, 'I am leaving you because B has made me a better offer.' This statement is a relevant fact as explanatory of C's conduct which is relevant as a fact in issue.

(*e*.) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says, as he delivers it, 'A says you are to hide this.' B's statement is relevant as explanatory of a fact which is part of the transaction.

(*f*.) A is tried for a riot, and is proved to have marched at the head of a mob.

The cries of the mob are relevant as explanatory of the nature of the transaction.

Things said or done by conspirator in reference to common design.

10. Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, any thing said, done, or written by any one of such persons in reference to

their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustration.

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Queen.

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Cabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

When facts not otherwise relevant become relevant.

11. Facts not otherwise relevant are relevant—

(1) if they are inconsistent with any fact in issue or relevant fact;

(2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.*

Illustrations.

(*a.*) The question is, whether A committed a crime at Calcutta on a certain day.

The fact that, on that day, A was at Lahore, is relevant.

The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(*b.*) The question is, whether A committed a crime.

The circumstances are such that the crime must have been committed either by A, B, C, or D. Every fact which shows that the crime could have been committed by no one else, and that it was not committed by either B, C, or D, is relevant.

In suits for damages, facts tending to enable Court to determine amount are relevant.

12. In suits in which damages are claimed any fact which will enable the Court to determine the amount of damages which ought to be awarded is relevant.

Facts relevant when right or custom is in question.

13. Where the question is as to the existence of any right or custom, the following facts are relevant:—

(*a.*) Any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted, or denied, or which was inconsistent with its existence;

(*b.*) Particular instances in which the right or custom was claimed, recognized, or exercised, or in which its exercise was disputed, asserted, or departed from.

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* 11 Bom. H. C. R. 90.

Act I. of 1872.

Illustration.

The question is, whether A has a right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father, irreconcileable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

Facts showing existence of state of mind, or of body, or bodily feeling.

14. Facts showing the existence of any state of mind—such as intention, knowledge, good faith, negligence, rashness, ill-will, or good will towards any particular person, or showing the existence of any state of body or bodily feeling—are relevant, when the existence of any such state of mind, or body, or bodily feeling, is in issue or relevant.

Explanation 1.—A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question.*

Explanation 2.—But where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact.*

Illustrations.

(*a.*) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article.

The fact that, at the same time, he was in possession of many other stolen articles, is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

(*b.*) † A is accused of fraudulently delivering to another person a counterfeit coin which, at the time when he delivered it, he knew to be counterfeit.

The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin, is relevant.

The fact that A had been previously convicted of delivering to another person as genuine a counterfeit coin knowing it to be counterfeit, is relevant.

(*c.*) A sues B for damage done by a dog of B's which B knew to be ferocious.

The facts that the dog had previously bitten X, Y, and Z, and that they had made complaints to B, are relevant.

(*d.*) The question is, whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant, as showing that A knew that the payee was a fictitious person.

(*e*) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

The fact of previous publications by A respecting B, showing ill-will on the part of A towards B, is relevant, as proving A's intention to harm B's reputation by the particular publication in question.

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B.

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* These two explanations have been substituted for the original one by Act III. of 1891, s. 1.

† This illustration has been substituted for the original by Act III. of 1891, s. 1.

(*f*.) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss.

The fact that, at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that A made the representation in good faith.

(*g*.) A is sued by B for the price of work done by B upon a house of which A is owner by the order of C, a contractor.

A's defence is that B's contract was with C.

The fact that A paid C for the work in question is relevant, as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A.

(*h*.) A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was, is relevant as showing that A did not, in good faith, believe that the real owner of the property could not be found.

The fact that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property, and wished to set up a false claim to it, is relevant, as showing that the fact that A knew of the notice did not disprove A's good faith.

(*i*.) A is charged with shooting at B with intent to kill him. In order to show A's intent, the fact of A's having previously shot at B may be proved.

(*j*.) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved, as showing the intention of the letters.

(*k*.) The question is, whether A has been guilty of cruelty towards B, his wife.

Expressions of their feeling towards each other shortly before or after the alleged cruelty are relevant facts.

(*l*.) The question is, whether A's death was caused by poison.

Statements made by A during his illness as to his symptoms are relevant facts.

(*m*.) The question is, what was the state of A's health at the time when an assurance on his life was effected.

Statements made by A as to the state of his health at or near the time in question are relevant facts.

(*n*) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A is injured.

The fact that B's attention was drawn on other occasions to the defect of that particular carriage is relevant.

The fact that B was habitually negligent about the carriages which he let to hire is irrelevant.

(*o*) A is tried for the murder of B by intentionally shooting him dead.

The fact that A, on other occasions, shot at B, is relevant, as showing his intention to shoot B.

The fact that A was in the habit of shooting at people with intent to murder them is irrelevant.

(*p*.) A is tried for a crime.

The fact that he said something indicating an intention to commit that particular crime is relevant.

The fact that he said something indicating a general disposition to commit crimes of that class is irrelevant.

Act I. of 1872.

Facts bearing on question whether act was accidental or intentional, or done with a particular knowledge or intention.

15. When there is a question whether an act was accidental or intentional, "or done with a particular knowledge or intention," * the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Illustrations.

(*a*.) A is accused of burning down his house in order to obtain money for which it is insured.

The facts that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance-office, are relevant, as tending to show that the fires were not accidental.

(*b*.) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that, on a particular occasion, he received less than he really did receive.

The question is, whether this false entry was accidental or intentional.

The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(*c*.) A is accused of fraudulently delivering to B a counterfeit rupee.

The question is, whether the delivery of the rupee was accidental.

The facts that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D, and E, are relevant, as showing that the delivery to B was not accidental.

Existence of course of business when relevant.

16. When there is a question whether a particular act was done, the existence of any course of business according to which it naturally would have been done is a relevant fact.

Illustrations.

(*a*.) The question is, whether a particular letter was despatched.

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place, are relevant.

(*b*.) The question is, whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

Admissions.

Admission defined.

17. An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons and under the circumstances hereinafter mentioned.

Admission—by party to proceeding or his agent;

18. Statements made by a party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions.

by suitor in representative character;

Statements made by parties to suits, suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character.

Statements made by—

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* In s. 15, the words quoted have been inserted by Act III. of 1891, s. 2.

(1) persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or

by party interested in subject-matter;

(2) persons from whom the parties to the suit have derived their interest in the subject-matter of the suit,

by person from whom interest derived.

are admissions, if they are made during the continuance of the interest of the persons making the statements.

19. Statements made by persons, whose position or liability it is necessary to prove as against any party to the suit, are admissions, if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

Admissions by persons whose position must be proved as against party to suit.

Illustration.

A undertakes to collect rents for B.

B sues A for not collecting rent due from C to B.

A denies that rent was due from C to B.

A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

20. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Admissions by persons expressly referred to by party to suit.

Illustration.

The question is, whether a horse sold by A to B is sound.

A says to B, 'Go and ask C; C knows all about it.' C's statement is an admission.

21. Admissions are relevant and may be proved as against the person who makes them, or his representative in interest;* but they cannot be proved by or on behalf of the person who makes them, or by his representative in interest, except in the following cases:—

Proof of admissions against persons making them, and by or on their behalf.

(1.) An admission may be proved by or on behalf of the person making it when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32.

(2.) An admission may be proved by or on behalf of the person making it when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3.) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

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* 4 Suth. W. R. 148.

Act I. of 1872.

Illustrations.

(*a.*) The question between A and B is, whether a certain deed is or is not forged. A affirms that it is genuine; B, that it is forged.

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged; but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

(*b.*) A, the captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business, showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove these statements, because they would be admissible between third parties, if he were dead, under section 32, clause (2).

(*c.*) A is accused of a crime committed by him at Calcutta. He produces a letter written by himself and dated at Lahore on that day, and bearing the Lahore post-mark of that day.

The statement in the date of the letter is admissible, because, if A were dead, it would be admissible under section 32, clause (2).

(*d.*) A is accused of receiving stolen goods knowing them to be stolen.

He offers to prove that he refused to sell them below their value.

A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(*e.*) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin, as he doubted whether it was counterfeit or not, and that that person did examine it, and told him it was genuine.

A may prove these facts for the reasons stated in the last-preceding illustration.

When oral admissions as to contents of documents are relevant.

22. Oral admissions as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

Admissions in civil cases when relevant.

23. In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

Explanation.—Nothing in this section shall be taken to exempt any barrister, pleader, attorney, or vakil from giving evidence of any matter of which he may be compelled to give evidence under section 126.

Confession caused by inducement, threat, or promise, when relevant in criminal proceeding.

24. A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat, or promise, having reference to the charge against the accused person, proceeding from a person in authority,* and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

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* 9 Bom. H. C. R. 358.

Confession to police-officer not to be proved.

25. No confession made to a police-officer* shall be proved as against a person accused of any offence.

Confession by accused while in custody of police not to be proved against him.

26. No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

Explanation.—In this section 'Magistrate' does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George or in Burma or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882.†

How much of information received from accused may be proved.

27. Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

Confession made after removal of impression caused by inducement, threat, or promise, relevant.

28. If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat, or promise, has, in the opinion of the Court, been fully removed, it is relevant.

Confession otherwise relevant not to become irrelevant because of promise of secrecy, &c.

29. If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

Consideration of proved confession affecting person making it and others jointly under trial for same offence.

30. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.‡

Explanation.—"Offence," as used in this section, includes the abetment of, or attempt to commit, the offence.§

Illustrations.

(*a.*) A and B are jointly tried for the murder of C. It is proved that A said, 'B and I murdered C.' The Court may consider the effect of this confession as against B.

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* In Upper Burma, s. 25 should be read as if the words "who is not a Magistrate" had been inserted after the word "police-officer."—See Upper Burma Laws Act (XX. of 1886), s. 7, cl. *d.*

† To s. 26 this explanation has been added by Act III. of 1891, s. 3.

‡ 10 Bom. H. C. R. 499; 19 Suth. W. R., Cr., 23.

§ The explanation to s. 30 has been inserted by Act III. of 1891, s. 4.

Act I. of 1872.

(*b*.) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said, 'A and I murdered C.'

This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

31. Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained.

Admissions not conclusive proof, but may estop.

Statements by persons who cannot be called as witnesses.

32. Statements, written or verbal, of relevant facts, made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases :—

Cases in which statement of relevant fact by person who is dead or cannot be found, &c., is relevant.

(1.) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

When it relates to cause of death;

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2.) When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty ; or of an acknowledgment, written or signed by him, of the receipt of money, goods, securities, or property of any kind ; or of a document used in commerce, written or signed by him ; or of the date of a letter or other document usually dated, written, or signed by him.

or is made in course of business;

(3.) When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him, or would have exposed him, to a criminal prosecution or to a suit for damages.

or against interest of maker;

(4.) When the statement gives the opinion of any such person, as to the existence of any public right or custom, or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom, or matter had arisen.

or gives opinion as to public right or custom, or matters of general interest;

(5.) When the statement relates to the existence of any relationship by blood, marriage, or adoption* between persons as to whose relationship by blood, marriage, or adoption the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

or relates to existence of relationship;

(6.) When the statement relates to the existence of any relationship by blood, marriage, or adoption* between persons deceased, and is made in any will or deed relating to

or is made in will or deed relating to family-affairs;

* See s. 2, Act XVIII., 1872.

the affairs of the family to which any such deceased person belonged, or in any family-pedigree, or upon any tombstone, family-portrait, or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

or in document relating to transaction mentioned in section 13, clause (*a*) :

(7.) When the statement is contained in any deed, will, or other document which relates to any such transaction as is mentioned in section 13, clause (*a*).

or is made by several persons, and expresses feelings relevant to matter in question.

(8.) When the statement was made by a numbe of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations.

(*a*.) The question is, whether A was murdered by B ; or

A dies of injuries received in a transaction in the course of which she was ravished. The question is, whether she was ravished by B ; or

The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape, and the actionable wrong under consideration, are relevant facts.

(*b*.) The question is, as to the date of A's birth.

An entry in the diary of a deceased surgeon, regularly kept in the course of business, stating that, on a given day, he attended A's mother, and delivered her of a son, is a relevant fact.

(*c*.) The question is, whether A was in Calcutta on a given day.

A statement in the diary of a deceased solicitor, regularly kept in the course of business, that, on a given day, the solicitor attended A at a place mentioned, in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

(*d*.) The question is, whether a ship sailed from Bombay harbour on a given day.

A letter written by a deceased member of a merchant's firm, by which she was chartered, to their correspondent in London, to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

(*e*.) The question is, whether rent was paid to A for certain land.

A letter from A's deceased agent to A, saying that he had received the rent on A's account, and held it at A's orders, is a relevant fact.

(*f*.) The question is, whether A and B were legally married.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime, is relevant.

(*g*.) The question is, whether A, a person who cannot be found, wrote a letter on a certain day.

The fact that a letter written by him is dated on that day is relevant.

(*h*.) The question is, what was the cause of the wreck of a ship.

A protest made by the captain, whose attendance cannot be procured, is a relevant fact.

(*i*.) The question is, whether a given road is a public way.

A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

(*j*.) The question is, what was the price of grain on a certain day in a particular market. A statement of the price, made by a deceased banya in the ordinary course of his business, is a relevant fact.

(*k*.) The question is, whether A, who is dead, was the father of B.

Act I. of 1872.

A statement by A that B was his son is a relevant fact.

(*l.*) The question is, what was the date of the birth of A.

A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

(*m.*) The question is, whether, and when, A and B were married.

An entry in a memorandum-book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.

(*n.*) A sues B for a libel expressed in a painted caricature exposed in a shop-window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved.

Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.

33. Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable: *

Provided—

that the proceeding was between the same parties or their representatives in interest;

that the adverse party in the first proceeding had the right and opportunity to cross-examine;

that the questions in issue were substantially the same in the first as in the second proceedings.

Explanation.—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

Statements made under Special Circumstances.

Entries in books of account when relevant.

34. Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Illustration.

A sues B for Rs. 1,000, and shows entries in his account-books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

Relevancy of entry in public record, made in performance of duty.

35. An entry in the public or other official book, register, or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty, specially enjoined by the law of the country in which such book, register, or record is kept, is itself a relevant fact.

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* *Queen* v. *Mowjan*, 20 Suth. W. R., C. R., 69.

36. Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts, or plans, are themselves relevant facts.

Relevancy of statements in maps, charts, and plans.

37. When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament, or in any Act of the Governor-General of India in Council, or of the Governors in Council of Madras or Bombay, or of the Lieutenant-Governor in Council of Bengal, or in a notification of the Government appearing in the *Gazette of India*, or in the gazette of any Local Government, or in any printed paper purporting to be the *London Gazette* or the *Government Gazette* of any colony or possession of the Queen, is a relevant fact.

Relevancy of statement as to fact of public nature contained in certain Acts or notifications.

38. When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country, and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

Relevancy of statements as to any law contained in law-books.

How much of a Statement is to be proved.

39. When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, book, or series of letters or papers, as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

What evidence to be given when statement forms part of a conversation, document, book, or series of letters or papers.

Judgments of Courts of Justice when relevant.

40. The existence of any judgment, order, or decree, which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact, when the question is whether such Court ought to take cognizance of such suit, or to hold such trial.

Previous judgments relevant to bar a second suit or trial.

41. A final judgment, order, or decree of a competent Court in the exercise of probate, matrimonial, admiralty, or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person, but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Relevancy of certain judgments in probate, &c., jurisdiction.

Such judgment, order, or decree is conclusive proof—

that any legal character which it confers accrued at the time when such judgment, order, or decree came into operation;

Act I. of 1872.

that any legal character to which it declares any such person to be entitled accrued to that person at the time when such judgment, order, or decree* declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment, order, or decree* declared that it had ceased or should cease;

and that any thing to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order, or decree* declares that it had been or should be his property.

Relevancy and effect of judgments, orders, or decrees, other than those mentioned in section 41.

42. Judgments, orders, or decrees, other than those mentioned in section 41, are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders, or decrees are not conclusive proof of that which they state.†

Illustration.

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

Judgments, &c., other than those mentioned in sections 40-42, when relevant.

43. Judgments, orders, or decrees, other than those mentioned in sections 40, 41, and 42, are irrelevant, unless the existence of such judgment, order, or decree, is a fact in issue, or is relevant under some other provision of this Act.

Illustrations.

(*a.*) A and B separately sue C for a libel which reflects upon each of them. C in each case says that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(*b.*) A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife, but the Court convicts B of adultery.

Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was A's wife.

The judgment against B is irrelevant as against C.

(*c*) A prosecutes B for stealing a cow from him. B is convicted.

A afterwards sues C for the cow, which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

(*d.*) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequeuce.

The existence of the judgment is relevant, as showing motive for a crime.

(*e.*) A is charged with theft and with having been previously convicted of theft. The previous conviction is relevant as a fact in issue.‡

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* See s. 3, Act XVIII., 1872.

† 22 Suth. W. R., C. R., 365.

‡ Illus. *e* has been added by Act III. of 1891, s. 5.

(*f*.) A is tried for the murder of B. The fact that B prosecuted A for libel, and that A was convicted and sentenced, is relevant under section 8 as showing the motive for the fact in issue.*

Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved.

44. Any party to a suit or other proceeding may show that any judgment, order, or decree, which is relevant under section 40, 41, or 42, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

Opinions of Third Persons, when relevant.

Opinions of experts.

45. When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting, the opinions upon that point of persons specially skilled in such foreign law, science, or art or in questions as to identity of handwriting,† are relevant facts.

Such persons are called experts.

Illustrations.

(*a*.) The question is, whether the death of A was caused by poison.

The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(*b*.) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(*c*.) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of experts on the question whether the two documents were written by the same person or by different persons are relevant.

Facts bearing upon opinions of experts.

46. Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Illustrations.

(*a*.) The question is, whether A was poisoned by a certain poison.

The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(*b*.) The question is, whether an obstruction to a harbour is caused by a certain sea-wall.

The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

Opinion as to handwriting when relevant.

47. When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the per-

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* Illus. *f* has been added by Act III. of 1891, s. 5.

† See s. 4, Act XVIII., 1872.

Act I. of 1872.

son by whom it is supposed to be written or signed, that it was or was not written or signed by that person, is a relevant fact.

Explanation.—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

Illustrations.

The question is, whether a given letter is in the handwriting of A, a merchant in London.

B is a merchant in Calcutta, who has written letters addressed to A, and received letters purporting to be written by him. C is B's clerk, whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon.

The opinions of B, C, and D on the question whether the letter is in the handwriting of A are relevant, though neither B, C, nor D ever saw A write.

Opinion as to existence of right or custom when relevant.

48. When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence, if it existed, are relevant.

Explanation.—The expression, 'general custom or right,' includes customs or rights common to any considerable class of persons.

Illustration.

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

Opinions as to usages, tenets, &c., when relevant.

49. When the Court has to form an opinion as to—

the usages and tenets of any body of men or family,

the constitution and government of any religious or charitable foundation, or

the meaning of words or terms used in particular districts or by particular classes of people,

the opinions of persons having special means of knowledge thereon are relevant facts.

Opinion on relationship when relevant.

50. When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact: Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, or in prosecutions under section 494, 495, 497, or 498, of the Indian Penal Code.

Illustrations.

(*a*.) The question is, whether A and B were married. The fact that they were usually received and treated by their friends as husband and wife is relevant.

(*b*.) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family is relevant.

Grounds of opinion, when relevant.

51. Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

Illustration.

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

Character when relevant.

In civil cases character to prove conduct imputed, irrelevant.

52. In civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him, is irrelevant, except in so far as such character appears from facts otherwise relevant.

In criminal cases, previous good character relevant.

53. In criminal proceedings the fact that the person accused is of a good character is relevant.

Previous bad character not relevant, except in reply.

54.* In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Explanation 1.—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

Explanation 2.—A previous conviction is relevant as evidence of bad character.

Character as affecting damages.

55. In civil cases, the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.

Explanation.—In sections 52, 53, 54, and 55, the word 'character' includes both reputation and disposition; but, "except as provided in section 54,"† evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

PART II.—ON PROOF.

CHAPTER III.—FACTS WHICH NEED NOT BE PROVED.

Fact judicially noticeable need not be proved.

56. No fact of which the Court will take judicial notice need be proved.

Facts of which Court must take judicial notice.

57. The Court shall take judicial notice of th following facts:—

(1.) All laws or rules having the force of law, now or heretofore in force, or hereafter to be in force, in any part of British India:

(2.) All public Acts passed or hereafter to be passed by Parliament, and all local and personal Acts directed by Parliament to be judicially noticed:

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* S. 54 has been substituted by Act III. of 1891, s. 6.

† In the explanation to s. 55, the words and figures quoted have been inserted Act III. of 1891, s. 7.

Act I. of 1872.

(3.) Articles of War for Her Majesty's Army or Navy :

(4) The course of proceeding of Parliament and of the Councils for the purposes of making Laws and Regulations established under the Indian Councils Act, or any other law for the time being relating thereto :

Explanation.—The word 'Parliament,' in clauses (2) and (4), includes—

1. The Parliament of the United Kingdom of Great Britain and Ireland :
2. The Parliament of Great Britain :
3. The Parliament of England :
4. The Parliament of Scotland ; and
5. The Parliament of Ireland :

(5.) The accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland :

(6.) All seals of which English Courts take judicial notice ; the seals of all the Courts of British India, and of all Courts out of British India, established by the authority of the Governor-General or any Local Government in Council ; the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public ; and all seals which any person is authorized to use by any Act of Parliament or other Act or Regulation having the force of law in British India :

(7.) The accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in any part of British India if the fact of their appointment to such office is notified in the *Gazette of India* or in the official gazette of any Local Government :

(8.) The existence, title, and national flag of every State or Sovereign recognized by the British Crown :

(9.) The divisions of time, the geographical divisions of the world, and public festivals, fasts, and holidays notified in the official gazette :

(10.) The territories under the dominion of the British Crown :

(11.) The commencement, continuance, and termination of hostilities between the British Crown and any other State or body of persons :

(12.) The names of the members and officers of the Court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders, and other persons authorized by law to appear or act before it :

(13.) The rule of the road* on land or at sea.†

In all these cases, and also on all matters of public history, literature, science, or art, the Court may resort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so, unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

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* The words " on land or at sea " have been inserted by Act XVIII. of 1872, s. 5.

† Also, for the purposes of civil suits, of the fact that a foreign State has not been recognized by Her Majesty or by the Governor-General in Council.—See Act XIV. of 1882, s. 431.

Facts admitted need not be proved.

58. No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which, by any rule of pleading in force at the time, they are deemed to have admitted by their pleadings: Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

CHAPTER IV.—OF ORAL EVIDENCE.

Proof of facts by oral evidence.

59. All facts, except the contents of documents, may be proved by oral evidence.

Oral evidence must be direct.

60. Oral evidence must, in all cases whatever, be direct; that is to say—

if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatise, if the author is dead, or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable:

Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

CHAPTER V.—OF DOCUMENTARY EVIDENCE.

Proof of contents of documents.

61. The contents of documents may be proved either by primary or by secondary evidence.

Primary evidence.

62. Primary evidence means the document itself produced for the inspection of the Court.

Explanation 1.—Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2.—Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest; but where they are all copies of a common original, they are not primary evidence of the contents of the original.

Illustration.

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Secondary evidence.

63. Secondary evidence means and includes—

(1.) Certified copies given under the provisions hereinafter contained;

(2.) Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;

(3.) Copies made from or compared with the original;

(4.) Counterparts of documents as against the parties who did not execute them;

(5.) Oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations.

(*a.*) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(*b.*) A copy compared with a copy of a letter made by a copying-machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying-machine was made from the original.

(*c.*) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(*d.*) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

Proof of documents by primary evidence.

64. Documents must be proved by primary evidence, except in the cases hereinafter mentioned.

Cases in which secondary evidence relating to documents may be given.

65. Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:—

(*a.*) When the original is shown or appears to be in the possession or power—

of the person against whom the document is sought to be proved, or

of any person out of reach of, or not subject to, the process of the Court, or

of any person legally bound to produce it,

and when, after the notice mentioned in section 66, such person does not produce it;

(*b.*) When the existence, condition, or contents of the original have been proved to be admitted in writing by the person against whom it is proved, or by his representative in interest;

(*c.*) When the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(*d.*) When the original is of such a nature as not to be easily moveable;

(*e.*) When the original is a public document within the meaning of section 74;

(*f*.) When the original is a document of which a certified copy is permitted by this Act, or by any other law in force in British India, to be given in evidence;

(*g*.) When the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (*a*), (*c*), and (*d*), any secondary evidence of the contents of the document is admissible.

In case (*b*), the written admission is admissible.

In case (*e*) or (*f*), a certified copy of the document, but no other kind of secondary evidence; is admissible.

In case (*g*), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

Rules as to notice to produce.

66. Secondary evidence of the contents of the documents referred to in section 65, clause (*a*), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his attorney or pleader, * such notice to produce it as is prescribed by law; and, if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case:

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it:—

(1.) When the document to be proved is itself a notice;

(2.) When, from the nature of the case, the adverse party must know that he will be required to produce it;

(3.) When it appears or is proved that the adverse party has obtained possession of the original by fraud or force;

(4.) When the adverse party or his agent has the original in Court;

(5.) When the adverse party or his agent has admitted the loss of the document;

(6.) When the person in possession of the document is out of reach of, or not subject to, the process of the Court.

Proof of signature and handwriting of person alleged to have signed or written document produced.

67. If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

Proof of execution of document required by law to be attested.

68. If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court, and capable of giving evidence.

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* See s. 6, Act XVIII., 1872.

Act I. of 1872.

Proof where no attesting witness found.

69. If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

Admission of execution by party to attested document.

70. The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

Proof when attesting witness denies the execution.

71. If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

Proof of document not required by law to be attested.

72. An attested document not required by law to be attested may be proved as if it was unattested.

Comparison of signature, writing, or seal, with others admitted or proved.

73. In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

Public Documents.

Public documents.

74. The following documents are public documents :—

1. Documents forming the Acts, or records of the Acts—
   (i) of the sovereign authority,
   (ii) of official bodies and tribunals, and
   (iii) of public officers, legislative, judicial, and executive, whether of British India, or of any other part of Her Majesty's dominions, or of a foreign country.
2. Public records kept in British India of private documents.

Private documents.

75. All other documents are private.

Certified copies of public documents.

76. Every public officer having the custody of a public document which any person has a right to inspect shall give that person, on demand, a copy of it, on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal ; and such copies so certified shall be called certified copies.

Explanation.—Any officer who by the ordinary course of official duty is authorized to deliver such copies shall be deemed to have the custody of such documents within the meaning of this section.

Proof of documents by production of certified copies.

77. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Proof of other official documents.

78. The following public documents may be proved as follows:—

(1.) Acts, orders, or notifications of the Executive Government of British India in any of its departments, or of any Local Government or any department of any Local Government,

by the records of the departments, certified by the heads of those departments respectively,

or by any document purporting to be printed by order of any such Government;

(2.) The proceedings of the Legislatures,

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of Government;

(3.) Proclamations, orders, or regulations issued by Her Majesty, or by the Privy Council, or by any department of Her Majesty's Government,

by copies or extracts contained in the *London Gazette*, or purporting to be printed by the Queen's Printer;

(4.) The Acts of the Executive or the proceedings of the Legislature of a foreign country,

by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some public Act of the Governor-General of India in Council;

(5.) The proceedings of a municipal body in British India,

by a copy of such proceedings certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body;

(6.) Public documents of any other class in a foreign country,

by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a Notary Public, or of a British Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

Presumptions as to Documents.

Presumption as to genuineness of certified copies.

79. The Court shall presume every document purporting to be a certificate, certified copy, or other document which is by law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer in British India, or by any officer in any Native State in alliance with Her Majesty, who is duly authorized thereto by the Governor-General in Council, to be genuine: Provided that such document is substantially in the form, and purports to be executed in the manner, directed by law in that behalf.

The Court shall also presume that any officer by whom any such document purports to be signed or certified held, when he signed it, the official character which he claims in such paper.

Act I. of 1872.

Presumption as to documents produced as record of evidence.

80. Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume—

that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true; and that such evidence, statement, or confession was duly taken.

Presumption as to gazettes, newspapers, private Acts of Parliament, and other documents.

81. The Court shall presume the genuineness of every document purporting to be the *London Gazette*, or the *Gazette of India*, or the Government Gazette of any Local Government, or of any colony, dependency, or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by the Queen's Printer, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law, and is produced from proper custody.

Presumption as to document admissible in England without proof of seal or signature.

82. When any document is produced before any Court, purporting to be a document which, by the law in force for the time being in England or Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp, or signature, is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims,

and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

Presumption as to maps or plans made by authority of Government.

83. The Court shall presume that maps or plans purporting to be made by the authority of Government were so made and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.

Presumption as to collections of laws and reports of decisions.

84. The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country,

and of every book purporting to contain reports of decisions of the Courts of such country.

Presumption as to powers-of-attorney.

85. The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, British Consul, or Vice-Consul, or representative of Her Majesty or of the Government of India, was so executed and authenticated.

Presumption as to certified copies of foreign judicial records.

86. The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate, if the document purports to be certified

in any manner which is certified by any representative of Her Majesty or of the Government of India "in or for" * such country to be the manner commonly in use in that country for the certification of copies of judicial records.

An officer who, with respect to any territory or place not forming part of Her Majesty's dominions, is a Political Agent therefor, as defined in section 3 of the Foreign Jurisdiction and Extradition Act, 1879, and section 190 of the Code of Criminal Procedure, 1882, shall, for the purposes of this section, be deemed to be a representative of the Government of India in and for the country comprising that territory or place.†

Presumption as to books, maps, and charts.

87. The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts, and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

Presumption as to telegraphic messages.

88. The Court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

Presumption as to due execution, &c., of documents not produced.

89. The Court shall presume that every document, called for and not produced after notice to produce, was attested, stamped, and executed in the manner required by law.

Presumption as to documents thirty years old.

90. Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation.—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section 81.

Illustrations.

(*a.*) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land showing his titles to it. The custody is proper.

(*b.*) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.

(*c.*) A, a connection of B, produces deeds relating to lands in B's possession which were deposited with him by B for safe custody. The custody is proper.

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* In s. 86, the words quoted have been substituted for the words "resident in" by Act III. of 1891, s. 8.

† To s. 86 this paragraph has been added by Act III. of 1891, s. 8.

Act I. of 1872.

CHAPTER VI.—OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE.

Evidence of terms of contracts, grants, and other dispositions of property reduced to form of document.

91. When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence * shall be given in proof of the terms of such contract, grant, or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.—Wills admitted to probate in British India † may be proved by the probate.

Explanation 1.—This section applies equally to cases in which the contracts, grants, or dispositions of property referred to, are contained in one document, and to cases in which they are contained in more documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations.

(*a.*) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(*b.*) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(*c.*) If a bill of exchange is drawn in a set of three, one only need be proved.

(*d.*) A contracts, in writing, with B, for the delivery of indigo upon certain terms.

The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(*e.*) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

Exclusion of evidence of oral agreement.

92. When the terms of any such contract, grant, or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso 1.—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such

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* Evidence may, however, be taken where a Criminal Court finds that a confession or other statement of an accused person has not been recorded in manner prescribed. —See Act X. of 1882, s. 533.

† See s. 7, Act XVIII., 1872.

as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law.

Proviso 2.—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso 3.—The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant, or disposition of property, may be proved.

Proviso 4.—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant, or disposition of property may be proved, except in cases in which such contract, grant, or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso 5.—Any usage or custom, by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved: Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso 6.—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations.

(*a.*) A policy of insurance is effected on goods "in ships from Calcutta to London." The goods are shipped in a particular ship which is lost. The fact, that that particular ship was orally excepted from the policy, cannot be proved.

(*b.*) A agrees absolutely in writing to pay B Rs. 1,000 on the first March 1873. The fact, that, at the same time, an oral agreement was made that the money should not be paid till the thirty-first March, cannot be proved.

(*c*) An estate, called 'the Rámpur tea estate,' is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate, and was meant to pass by the deed, acnnot be proved.

(*d.*) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(*e.*) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(*f.*) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(*g.*) A sells B a horse, and verbally warrants him sound. A gives B a paper in these words: 'Bought of A a horse for Rs. 500.' B may prove the verbal warranty.

(*h.*) A hires lodgings of B, and gives B a card on which is written—'Rooms, Rs. 200 a month.' A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the terms verbally.

(*i.*) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt, and does not send the money. In a suit for the amount, A may prove this.

Act I. of 1872.

(*j*.) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

93. When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning, or supply its defects.

Exclusion of evidence to explain or amend ambiguous document.

Illustrations.

(*a*.) A agrees, in writing, to sell a horse to B for 'Rs. 1,000 or Rs. 1,500.'

Evidence cannot be given to show which price was to be given.

(*b*.) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

94. When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Exclusion of evidence against application of document to existing facts.

Illustration.

A sells to B, by deed, 'my estate at Rámpur containing 100 bighas.' A has an estate at Rámpur containing 100 bighas. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

95. When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Evidence as to document is unmeaning in reference to existing facts.

Illustration.

A sells to B, by deed, 'my house in Calcutta.'

A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the house at Howrah.

96. When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several person or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Evidence as to application of language which can apply to one only of several persons.

Illustrations.

(*a*.) A agrees to sell to B, for Rs. 1,000, 'my white horse.' A has two white horses. Evidence may be given of facts which show which of them was meant.

(*b*.) A agrees to accompany B to Haidarábád. Evidence may be given of facts showing whether Haidarábád in the Dekkhan or Haidarábád in Sindh was meant.

97. When the language used applies partly to one set of existing facts and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.

Illustration.

A agrees to sell to B 'my land at X in the occupation of Y.' A has land at X, but not in the occupation of Y; and he has land in the occupation of Y but it is not at X. Evidence may be given of facts showing which he meant to sell.

98. Evidence may be given to show the meaning of illegible or not commonly intelligible characters of foreign, obsolete, technical, local, and provincial expressions of abbreviations, and of words used in a peculiar sense.

Evidence as to meaning of illegible characters, &c.

Illustration.

A, a sculptor, agrees to sell to B 'all my mods.' A has both models and modelling tools. Evidence may be given to show which he meant to sell.

99. Persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

Who may give evidence of agreement varying terms of document.

Illustration.

A and B make a contract in writing that B shall sell A certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C, if it affected his interests.

100. Nothing in this chapter contained shall be taken to affect any of the provisions of the Indian Succession Act (X. of 1865) as to the construction of wills.

Saving of provisions of Indian Succession Act relating to wills.

PART III.—PRODUCTION AND EFFECT OF EVIDENCE.

CHAPTER VII.—OF THE BURDEN OF PROOF.

101. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

Burden of proof.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations.

(*a.*) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.

(*b.*) A desires a Court to give judgment that he is entitled to certain land in the possession of B by reason of facts which he asserts, and which B denies, to be true.

A must prove the existence of those facts.

102. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

On whom burden of proof lies.

Illustrations.

(*a.*) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

Act I. of 1872.

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore the burden of proof is on A.

(*b*.) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed, as the bond is not disputed, and the fraud is not proved.

Therefore the burden of proof is on B.

Burden of proof as to particular fact.

103. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustration.

A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission.

B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

Burden of proving fact to be proved to make evidence admissible.

104. The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Illustrations.

(*a*.) A wishes to prove a dying declaration by B. A must prove B's death.

(*b*.) A wishes to prove, by secondary evidence, the contents of a lost document.

A must prove that the document has been lost.

Burden of proving that case of accused comes within exceptions.

105. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Illustrations.

(*a*.) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A.

(*b*.) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.

The burden of proof is on A.

(*c*.) Section 325 of the Indian Penal Code provides that whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section 325.

The burden of proving the circumstances bringing the case under section 335 lies on A.

Burden of proving fact specially within knowledge.

106. When any fact is specially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations.

(*a*.) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(*b*.) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

Burden of proving death of person known to have been alive within thirty years.

107. When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

Burden of proving that person is alive who has not been heard of for seven years.

108. Provided that, when* the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to* the person who affirms it.

Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent.

109. When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

Burden of proof as to ownership.

110. When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

Proof of good faith in transactions where one party is in relation of active confidence.

111. Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Illustrations.

(*a*.) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.

(*b*.) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

Birth during marriage conclusive proof of legitimacy.

112. The fact that any person was born during the continuance of a valid marriage between his mother and any man or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

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* See s. 9, Act XVIII., 1872.

Act I. of 1872.

Proof of cession of territory.

113. A notification in the *Gazette of India* that any portion of British territory has been ceded to any Native State, Prince, or Ruler,* shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification.

Court may presume existence of certain facts.

114. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.

Illustrations.

The Court may presume—

(*a*.) That a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;

(*b*.) That an accomplice is unworthy of credit, unless he is corroborated in material particulars;

(*c*.) That a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration;

(*d*.) That a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or state of things usually cease to exist, is still in existence;

(*e*.) That judicial and official acts have been regularly performed;

(*f*.) That the common course of business has been followed in particular cases;

(*g*.) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

(*h*.) That, if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him;

(*i*.) That, when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following in considering whether such maxims do or do not apply to the particular case before it:—

As to illustration (*a*)—A shopkeeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business:

As to illustration (*b*)—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself:

As to illustration (*b*)—A crime is committed by several persons. A, B, and C, three of the criminals, are captured on the spot, and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable:

As to illustration (*c*)—A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence:

As to illustration (*d*)—It is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course:

As to illustration (*e*)—A judicial act, the regularity of which is in question, was performed under exceptional circumstances:

As to illustration (*f*)—The question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances:

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* See, for example, *Gazette of India*, Jan. 4, 1873, p. 2.

As to illustration (*g*)—A man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family:

As to illustration (*h*)—A man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked:

As to illustration (*i*)—A bond is in possession of the obligor, but the circumstance of the case are such that he may have stolen it.

CHAPTER VIII.—ESTOPPEL.

Estoppel.

115. When one person has, by his declaration, act, or omission, intentionally caused or permitted another person to believe a thing to be true, and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration.

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

Estoppel of tenant; and of licensee of person in possession.

116. No tenant of immoveable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immoveable property; and no person who came upon any immoveable property by the license of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such license was given.

Estoppel of acceptor of bill of exchange, bailee, or licensee.

117. No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment or grant such license.

Explanation 1.—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation 2.—If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

CHAPTER IX.—OF WITNESSES.

Who may testify.

118. All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers

Act I. of 1872.

to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation.—A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him, and giving rational answers to them.

Dumb witnesses.

119. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

Parties to civil suit, and their wives or husbands.
Husband or wife of person under criminal trial.

120. In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

Judges and Magistrates.

121. No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Illustrations.

(*a.*) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer questions as to this, except upon the special order of a superior Court.

(*b.*) A is accused before the Court of Session of having given false evidence before B, a Magistrate. B cannot be asked what A said, except upon the special order of the superior Court.

(*c.*) A is accused before the Court of Session of attempting to murder a police-officer whilst on his trial before B, a Sessions Judge. B may be examined as to what occurred.

Communications during marriage.

122. No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

Evidence as to affairs of State.

123. No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the Department concerned, who shall give or withhold such permission as he thinks fit.

Official communications.

124. No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

Information as to commission of offences.

125. No Magistrate or police-officer shall be compelled to say whence he got any information as to the commission of any offence, and no revenue-officer shall be compelled to

say whence he got any information as to the commission of any offence against the public revenue.

Explanation.—"Revenue-officer" in this section means any officer employed in or about the business of any branch of the public revenue.*

126. No barrister, attorney, pleader, or vakil, shall, at any time, be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney, or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Professional communications.

Provided that nothing in this section shall protect from disclosure—

(1) Any such communication made in furtherance of any illegal† purpose,

(2) Any fact observed by any barrister, pleader, attorney, or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, pleader,† attorney, or vakil, was or was not directed to such fact by or on behalf of his client.

Explanation.—The obligation stated in this section continues after the employment has ceased.

Illustrations.

(*a.*) A, a client, says to B, an attorney, 'I have committed forgery, and I wish you to defend me.'

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(*b.*) A, a client, says to B, an attorney, 'I wish to obtain possession of property by the use of a forged deed on which I request you to sue.'

This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(*c.*) A, being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account-book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

127. The provisions of section 126 shall apply to interpreters, and the clerks or servants of barristers, pleaders, attorneys, and vakils.

Section 126 to apply to interpreters, &c.

128. If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 126; and if any party to a suit or proceeding calls any such barrister, pleader,†

Privilege not waived by volunteering evidence.

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* Substituted by Act III. of 1887 for the section originally enacted.

† See s. 10, Act XVIII., 1872.

Act I. of 1872.

attorney, or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney, or vakil on matters which, but for such question, he would not be at liberty to disclose.

Confidential communications with legal advisers.

129. No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

Production of title-deeds of witness not a party.

130. No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property, or any document in virtue of which he holds any property as pledgee or mortgagee, or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds, or some person through whom he claims.

Production of documents which another person, having possession, could refuse to produce.

131. No one shall be compelled to produce documents in his possession which any other person would be entitled to refuse to produce if they were in his possession, unless such last-mentioned person consents to their production.

Witness not excused from answering on ground that answer will criminate.

132. A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend, directly or indirectly, to criminate such witness, or that it will expose, or tend directly or indirectly, to expose, such witness to a penalty or forfeiture of any kind :

Proviso.

Provided that no such answer, which a witness shall be compelled to give shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

Accomplice.

133. An accomplice shall be a competent witness against an accused person ; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

Number of witnesses.

134. No particular number of witnesses shall in any case be required for the proof of any fact.

CHAPTER X.—OF THE EXAMINATION OF WITNESSES.

Order of production and examination of witnesses.

135. The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

Judge to decide as to admissibility of evidence.

136. When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be re-

levant; and the Judge shall admit the evidence, if he thinks that the fact, if proved, would be relevant, and not otherwise.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations.

(*a.*) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section 32.

The fact that the person is dead must be proved by the person proposing to prove the statement before evidence is given of the statement.

(*b.*) It is proposed to prove, by a copy, the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

(*c.*) A is accused of receiving stolen property knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.

(*d.*) It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (B, C, and D) which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C, or D is proved, or may require proof of B, C, and D before permitting proof of A.

Examination-in-chief.

137. The examination of a witness by the party who calls him shall be called his examination-in-chief.

Cross-examination.

The examination of a witness by the adverse party shall be called his cross-examination.

Re-examination.

The examination of a witness, subsequent to the cross-examination, by the party who called him, shall be called his re-examination.

Order of examinations. Direction of re-examination.

138. Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

Act I. of 1872.

Cross-examination of person called to produce a document.

139. A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.

Witnesses to character.

140. Witnesses to character may be cross-examined and re-examined.

Leading questions.

141. Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question.

When they must not be asked.

142. Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court.

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

When they may be asked.

143. Leading questions may be asked in cross-examination.

Evidence as to matters in writing.

144. Any witness may be asked, whilst under examination, whether any contract, grant, or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

Explanation.—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustration.

The question is, whether A assaulted B.

C deposes that he heard A say to D, 'B wrote a letter accusing me of theft, and I will be revenged on him.' This statement is relevant, as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

Cross-examination as to previous statements in writing.

145. A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing,* his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

Questions lawful in cross-examination.

146. When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend—

(1.) to test his veracity;

(2.) to discover who he is, and what is his position in life, or

* This applies to police-diaries.—See s. 172, Act X., 1882.

(3) to shake his credit by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him, or might expose or tend directly or indirectly to expose him to a penalty or forfeiture. Act I. of 1872.

When witness to be compelled to answer.

147. If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 132 shall apply thereto.

Court to decide when question shall be asked, and when witness compelled to answer.

148. If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations:—

(1.) Such questions are proper if they are of such nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies:

(2.) Such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies:

(3.) Such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence:

(4.) The Court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer, if given, would be unfavourable.

Question not to be asked, without reasonable grounds.

149. No such question as is referred to in section 148 ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

Illustrations.

(*a.*) A barrister is instructed by an attorney or vakil that an important witness is a dakait. This is a reasonable ground for asking the witness whether he is a dakait.

(*b.*) A pleader is informed by a person in Court that an important witness is a dakait. The informant, on being questioned by the pleader, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a dakait.

(*c.*) A witness, of whom nothing whatever is known, is asked at random whether he is a dakait. There are here no reasonable grounds for the question.

(*d.*) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a dakait.

Procedure of Court in case of question being asked without reasonable grounds.

150. If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, pleader, vakil, or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakil, or attorney, is subject in the exercise of his profession.

Indecent and scandalous questions.

151. The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the ques-

Act I. of 1872.

tions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

Questions intended to insult or annoy.

152. The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

Exclusion of evidence to contradict answers to questions testing veracity.

153. When a witness has been asked, and has answered, any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but if he answers falsely, he may afterwards be charged with giving false evidence.

Exception 1.—If a witness is asked whether he has been previously convicted of any crime, and denies it, evidence may be given of his previous conviction.

Exception 2.—If a witness is asked any question tending to impeach his impartiality, and answers it by denying the fact suggested, he may be contradicted.

Illustrations.

(*a.*) A claim against an underwriter is resisted on the ground of fraud.

The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible.

(*b*) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(*c.*) A affirms that on a certain day he saw B at Lahore.

A is asked whether he himself was not on that day at Calcutta. He denies it.

Evidence is offered to show that A was on that day at Calcutta.

The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore.

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

(*d.*) A is asked whether his family has not had a blood-feud with the family of B against whom he gives evidence.

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

Question by party to his own witness.

154. The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

Impeaching credit of witness.

155. The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him :—

(1.) By the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(2.) By proof that the witness has been bribed, or has accepted* the offer of a bribe, or has received any other corrupt inducement to give his evidence ;

(3.) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted ;

(4.) When a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

Explanation.—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations.

(*a.*) A sues B for the price of goods sold and delivered to B.

C says that he delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B.

The evidence is admissible.

(*b.*) A is indicted for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.

The evidence is admissible.

Questions tending to corroborate evidence of relevant fact, admissible.

156. When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

Illustration.

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

Former statements of witness may be proved to corroborate after testimony as to same fact.

157. In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

What matters may be proved in connection with proved statement relevant under section 32 or 33.

158. Whenever any statement relevant under section 32 or 33 is proved, all matters may be proved, either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person

* See s. 11, Act XVIII., 1872.

Act I. of 1872.

had been called as a witness, and had denied upon cross-examination the truth of the matter suggested.

Refreshing memory.

159. A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

The witness may also refer to any such writing made by any other person and read by the witness within the time aforesaid, if, when he read it, he knew it to be correct.

When witness may use copy of document to refresh memory.

Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document: Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

An expert may refresh his memory by reference to professional treatises.

Testimony to facts stated in document mentioned in section 159.

160. A witness may also testify to facts mentioned in any such document as is mentioned in section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Illustration.

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

Right of adverse party as to writing used to refresh memory.

161.* Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party, if he requires it; such party may, if he pleases, cross-examine the witness thereupon.

Production of documents.

162. A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.

The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

Translation of documents.

If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence, and, if the interpreter disobeys such direction, he shall be held to have committed an offence under section 166 of the Indian Penal Code.

Giving, as evidence, of document called for and produced on notice.

163. When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence, if the party producing it requires him to do so.

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* This section applies to police-diaries.—See s. 172, Act X., 1882.

164. When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence, without the consent of the other party, or the order of the Court.

Using, as evidence, of document, production of which was refused on notice.

Illustration.

A sues B on an agreement, and gives B notice to produce it. At the trial, A calls for the document, and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A. or in order to show that the agreement is not stamped. He cannot do so.

165. The Judge may, in order to discover, or to obtain proper proof of, relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither parties, nor their agents, shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question :

Judge's power to put questions or order production.

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved :

Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document, which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked, or the document were called for, by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

166. In cases tried by jury or with assessors, the jury or assessors may put any questions to the witnesses through or by leave of the Judge, which the Judge himself might put, and which he considers proper.

Power of jury or assessors to put questions.

Chapter XI.—Of Improper Admission and Rejection of Evidence.

167. The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to, and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

No new trial for improper admission or rejection of evidence.

Act I. of 1872.

SCHEDULE.

ENACTMENTS REPEALED.

(See section 2.)

Number and year.	Title.	Extent of repeal.
Stat. 26 Geo. III., cap. 57.	For the further regulation of the trial of persons accused of certain offences committed in the East Indies; for repealing so much of an Act, made in the twenty-fourth year of the reign of his present Majesty (intituled 'An Act for the better regulation and management of the affairs of the East India Company and of the British possessions in India, and for establishing a Court of Judicature for the more speedy and effectual trial of persons accused of offences committed in the East Indies'), as requires the servants of the East India Company to deliver inventories of their estates and effects, for rendering the laws more effectual against persons unlawfully resorting to the East Indies; and for the more easy proof, in certain cases, of deeds and writings executed in Great Britain or India.	Section 38, so far as it relates to Courts of Justice in the East Indies.
Stat. 14 & 15 Vic., cap. 99.	To amend the Law of Evidence	Section 11, and so much of section 19 as relates to British India.
Act XV. of 1852 ...	To amend the Law of Evidence	So much as has not been heretofore repealed.
Act XIX. of 1853 ...	To amend the Law of Evidence in the Civil Courts of the East India Company in the Bengal Presidency.	Section 19.
Act II. of 1855 ...	For the further improvement of the Law of Evidence.	So much as has not been heretofore repealed.
Act XXV. of 1861 ...	For simplifying the procedure of the Courts of Criminal Judicature not established by Royal Charter.	Section 237.
~~Act I. of 1868 ... ...~~	~~The General Clauses Act, 1868 ... ...~~	~~Sections 7 and 8.~~

ACT III. OF 1872.*

Act III. of 1872.

RECEIVED THE G.-G.'S ASSENT ON THE 22ND MARCH 1872.

An Act to provide a form of Marriage in certain cases.

Preamble.

WHEREAS it is expedient to provide a form of marriage for persons who do not profess the Christian, Jewish, Hindu, Muhammadan, Pársí, Buddhist, Sikh, or Jaina religion, and to legalize certain marriages the validity of which is doubtful; It is hereby enacted as follows :—

Local extent.
Commencement.

1. This Act extends to the whole of British India.

[*Repealed by Act XVI. of 1874.*]

Conditions upon which marriages under Act may be celebrated.

2. Marriages may be celebrated under this Act between persons neither of whom professes the Christian or the Jewish, or the Hindu or the Muhammadan, or the Pársí or the Buddhist, or the Sikh or the Jaina religion, upon the following conditions :—

(1) neither party must, at the time of the marriage, have a husband or wife living :

(2) the man must have completed his age of eighteen years, and the woman her age of fourteen years, according to the Gregorian calendar :

(3) each party must, if he or she has not completed the age of twenty-one years, have obtained the consent of his or her father or guardian to the marriage :

(4) the parties must not be related to each other in any degree of consanguinity or affinity which would, according to any law to which either of them is subject, render a marriage between them illegal.

1st Proviso.—No such law or custom, other than one relating to consanguinity or affinity, shall prevent them from marrying.

2nd Proviso.—No law or custom as to consanguinity shall prevent them from marrying unless a relationship can be traced between the parties through some common ancestor, who stands to each of them in a nearer relationship than that of great-great-grandfather or great-great-grandmother, or unless one of the parties is the lineal ancestor, or the brother or sister of some lineal ancestor, of the other.

Appointment of Marriage Registrars.

3. The Local Government may appoint one or more Registrars under this Act, either by name or as holding any office for the time being, for any portion of the territory subject to its administration. The officer so appointed shall be called 'Registrar of Mar-

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* Act III. of 1872 is included in the Schedule to the Santál Parganas Laws Regulation.—See Regulation III. of 1886.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	See *Gazette of India*	Oct. 22, 1881, Pt. I., p. 504.
The North-Western Provinces Tarái	Ditto	Sep. 23, 1876, Pt. I., p. 505.

Act III. of 1872.

riages under Act III. of 1872,' and is hereinafter referred to as the 'Registrar.' The portion of territory for which any such officer is appointed shall be deemed his district.

One of the parties to intending marriage to give notice to Registrar.

4. When a marriage is intended to be solemnized under this Act, one of the parties must give notice in writing to the Registrar before whom it is to be solemnized.

The Registrar to whom such notice is given must be the Registrar of a district within which one at least of the parties to the marriage has resided for fourteen days before such notice is given.

Such notice may be in the form given in the first schedule to this Act.

Notice to be filed and copy entered in the Marriage Notice Book.

5. The Registrar shall file all such notices, and keep them with the records of his office, and shall also forthwith enter a true copy of every such notice in a book to be for that purpose furnished to him by the Government, to be called the "Marriage Notice Book under Act III. of 1872," and such book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same.

Objection to marriage.

6. Fourteen days after notice of an intended marriage has been given under section 4, such marriage may be solemnized, unless it has been previously objected to in the manner hereinafter mentioned.

Any person may object to any such marriage on the ground that it would contravene some one or more of the conditions prescribed in clause (1), (2), (3), or (4) of section 2.

The nature of the objection made shall be recorded in writing by the Registrar in the register, and shall, if necessary, be read over and explained to the person making the objection, and shall be signed by him or on his behalf.

Procedure on receipt of objection.

7. On receipt of such notice of objection the Registrar shall not proceed to solemnize the marriage until the lapse of fourteen days from the receipt of such objection, if there be a Court of competent jurisdiction open at the time, or, if there be no such Court open at the time, until the lapse of fourteen days from the opening of such Court.

Objector may file suit.

The person objecting to the intended marriage may file a suit in any Civil Court having local jurisdiction (other than a Court of Small Causes) for a declaratory decree, declaring that such marriage would contravene some one or more of the conditions prescribed in clause (1), (2), (3), or (4) of section 2.

Certificate of filing of suit to be lodged with Registrar.

8. The officer before whom such suit is filed shall thereupon give the person presenting it a certificate to the effect that such suit has been filed. If such certificate be lodged with the Registrar within fourteen days from the receipt of notice of objection, if there be a Court of competent jurisdiction open at the time, or, if there be no such Court open at the time, within fourteen days of the opening of such Court, the marriage shall not be solemnized till the decision of such Court has been given, and the period allowed by law for appeals from such decision has elapsed; or, if there be an appeal from such decision, till the decision of the Appellate Court has been given.

If such certificate be not lodged in the manner and within the period prescribed in the last preceding paragraph, or if the decision of the Court be that such marriage would not contravene any one or more of the conditions prescribed in clause (1), (2), (3), or (4) of section 2, such marriage may be solemnized.

If the decision of such Court be that the marriage in question would contravene any one or more of the conditions prescribed in clause (1), (2), (3), or (4) of section 2, the marriage shall not be solemnized.

Court may fine when objection not reasonable.

9. Any Court in which any such suit as is referred to in section 7 is filed may, if it shall appear to it that the objection was not reasonable and *bonâ fide*, inflict a fine, not exceeding one thousand rupees, on the person objecting, and award it, or any part of it, to the parties to the intended marriage.

Declaration by parties and witnesses.

10. Before the marriage is solemnized, the parties and three witnesses, shall, in the presence of the Registrar, sign a declaration in the form contained in the second schedule to this Act. If either party has not completed the age of twenty-one years, the declaration shall also be signed by his or her father or guardian, except in the case of a widow, and, in every case, it shall be countersigned by the Registrar.

Marriage how to be solemnized.

11. The marriage shall be solemnized in the presence of the Registrar and of the three witnesses who signed the declaration. It may be solemnized in any form, provided that each party says to the other, in the presence and hearing of the Registrar and witnesses, 'I, [A,] take thee, [B,] to be my lawful wife (*or* husband).'

Place where marriage may be solemnized.

12. The marriage may be celebrated either at the office of the Registrar or at such other place, within reasonable distance of the office of the Registrar, as the parties desire: Provided that the Local Government may prescribe the conditions under which such marriages may be solemnized at places other than the Registrar's office, and the additional fees to be paid thereupon.

Certificate of marriage.

13. When the marriage has been solemnized, the Registrar shall enter a certificate thereof in a book to be kept by him for that purpose and to be called the 'Marriage Certificate Book under Act III. of 1872,' in the form given in the third schedule to this Act, and such certificate shall be signed by the parties to the marriage and the three witnesses.

Transmission of certified copies of entries in Marriage Certificate Book to the Registrar-General of Births, Deaths, and Marriages.

13A.* The Registrar shall send to the† Registrar-General of Births, Deaths, and Marriages for the territories within which his district is situate, at such intervals as the Governor-General in Council, from time to time, directs, a true copy certified by him, in such form as the Governor-General in Council, from time to time, prescribes, of all entries made by him in the said Marriage Certificate Book since the last of such intervals.*

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* S. 13A has been inserted by Act VI. of 1886, s. 29.

† As to the duty of the Registrar-General to make and keep indexes of the certified copies sent to his office under this section, see Act VI. of 1886, s. 7.

Act III. of 1872.

Fees.

14. The Local Government shall prescribe the fees to be paid to the Registrar for the duties to be discharged by him under this Act.

The Registrar may, if he think fit, demand payment of any such fee before solemnization of the marriage or performance of any other duty in respect of which it is payable.

The said Marriage Certificate Book shall at all reasonable times be open for inspection, and shall be admissible as evidence of the truth of the statements therein contained. Certified extracts therefrom shall on application be given by the Registrar on the payment to him by the applicant of a fee to be fixed by the Local Government for each such extract.

Penalty on married person marrying again under Act.

15. Every person who, being at the time married, procures a marriage of himself to be solemnized under this Act, shall be deemed to have committed an offence under section 494 or section 495 of the Indian Penal Code, as the case may be; and the marriage so solemnized is void.

Punishment of bigamy.

16. Every person married under this Act who, during the lifetime of his or her wife or husband, contracts any other marriage, shall be subject to the penalties provided in sections 494 and 495 of the Indian Penal Code for the offence of marrying again during the lifetime of a husband or wife, whatever may be the religion which he or she professed at the time of such second marriage.

Indian Divorce Act to apply.

17. The Indian Divorce Act* shall apply to all marriages contracted under this Act and any such marriage may be declared null or dissolved in the manner therein provided, and for the causes therein mentioned, or on the ground that it contravenes some one or more of the conditions prescribed in clause (1), (2), (3), or (4) of section 2 of this Act.

Law to apply to issue of marriages under Act.

18. The issue of marriages solemnized under this Act shall, if they marry under this Act, be deemed to be subject to the law to which their fathers were subject as to the prohibition of marriages by reason of consanguinity and affinity, and the provisos to section 2 of this Act shall apply to them.

Saving of marriages solemnized otherwise than under Act.

19. Nothing in this Act contained shall affect the validity of any marriage not solemnized under its provisions; nor shall this Act be deemed directly or indirectly to affect the validity of any mode of contracting marriage; but, if the validity of any such mode shall hereafter come into question before any Court, such question shall be decided as if this Act had not been passed.

Registry of marriages contracted before passing of Act.

20. [*Repealed by Act XII. of 1876.*]

Penalty for signing declarations or certificates containing false statements.

21. Every person making, signing, or attesting any declaration or certificate prescribed by this Act, containing a statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall be deemed guilty of the offence described in section 199 of the Indian Penal Code.

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* See *supra*, page 721.

FIRST SCHEDULE.

Act III. of 1872.

(See section 4.)

NOTICE OF MARRIAGE.

To , a Registrar of marriages under Act III. of 1872 for the District.

I hereby give you notice that a marriage under Act III. of 1872 is intended to be had, within three calendar months from the date hereof between me and the other party herein named and described (that is to say) :—

Names.	Condition.	Rank or profession.	Age.	Dwelling-place.	Length of residence.
A B	*Unmarried Widower.*	*Landowner.*	*Of full age.*	...	*23 days.*
C D	*Spinster.*	...	*Minor.*	...	...

Witness my hand, this day of 18 .

(*Signed*) *A. B.*

SECOND SCHEDULE.

(See section 10.)

DECLARATION TO BE MADE BY THE BRIDEGROOM.

I, *A B*, hereby declare as follows :—

1. I am at the present time unmarried :

2. I do not profess the Christian, Jewish, Hindu, Muhammadan, Párs, Buddhist, Sikh, or Jaina religion :

3. I have completed my age of eighteen years :

4. I am not related to *C D* [*the bride*] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said *C D* is subject, and subject to the provisos of clause (4) of section 2 of Act III. of 1872, render a marriage between us illegal :

[*And when the bridegroom has not completed his age of twenty-one years :*

5. The consent of my father [*or* guardian, *as the case may be*] has been given to a marriage between myself and *C D*, and has not been revoked :]

6. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine.

(*Signed*) *A B* [*the bridegroom*].

Declaration to be made by the Bride.

I, *C D*, hereby declare as follows :—

1. I am at the present time unmarried :

2. I do not profess the Christian, Jewish, Hindu, Muhammadan, Párs, Buddhist, Sikh, or Jaina religion :

3. I have completed my age of fourteen years :

4. I am not related to *A B* [*the bridegroom*] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to

Act III. of 1872. which the said *A B* is subject, and subject to the provisos of clause (4) of section 2 of Act III. of 1872, render a marriage between us illegal:

[*And when the bride has not completed her age of twenty-one years, unless she is a widow:*

5. The consent of *M N*, my father [*or* guardian, *as the case may be*], has been given to a marriage between myself and *A B*, and has not been revoked:]

6. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine.

(*Signed*) *C D* [*the bride*].

Signed in our presence by the above-named *A B* and *C D*:

G H,
I J,
K L, } [*three witnesses*].

[*And when the bridegroom or bride has not completed the age of twenty-one years, except in the case of a widow:*

Signed in my presence and with my consent by the above-named *A B* and *C D*:

M N, the father [*or* guardian] of the above-named *A B* [or *C D*, *as the case may be*].

(*Countersigned*) *E F*,
Registrar of Marriages under Act III. of 1872 for the District of .

Dated the day of 18 .

THIRD SCHEDULE.

(See section 13.)

REGISTRAR'S CERTIFICATE.

I, *E F*, certify that on the of 18 appeared before me *A B* and *C D*, each of whom in my presence and in the presence of three credible witnesses, whose names are signed hereunder, made the declarations required by Act III. of 1872, and that a marriage under the said Act was solemnized between them in my presence.

(*Signed*) *E F*,
Registrar of Marriages under Act III. of 1872 for the District of .

(*Signed*) *A B.*
C D.

G H,
I J,
K L, } [*three witnesses.*]

Dated the day of 18 .

FOURTH SCHEDULE.

(See section 20.)

[*Repealed by Act XII. of 1876.*]

ACT IV. OF 1872.

THE PANJAB LAWS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 28TH MARCH 1872.

An Act for declaring which of certain rules, laws, and regulations have the force of law in the Panjáb, and for other purposes.

Preamble.

WHEREAS certain rules, laws, and regulations, made heretofore for the Panjáb, acquired the force of law under the provisions of section twenty-five of the Indian Councils Act, 1861; and whereas it is expedient to declare which of the said rules, laws, and regulations, shall henceforth be in force in the Panjáb, and to amend, consolidate, or repeal others of the said rules, orders, and regulations; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Panjáb Laws Act, 1872:"

Local extent.

2. It extends to the territories now under the administration of the Lieutenant-Governor of the Panjáb, but not so as to alter the effect of any regulations made for any parts of the said territories under the Statute 33 Vic., cap. 3, section 1;

Commencement.

And it shall come into force on the first day of June 1872.

Enactments in force.

3. The Regulations, Acts, and orders specified in the first schedule hereto annexed, are in force in the Panjáb to the extent specified in the third column of the said schedule.

Enactments repealed.

4. The Regulations, Acts, and orders specified in the second schedule hereto annexed, are repealed to the extent specified in the third column thereof.

CIVIL JUDICATURE.

Decisions in certain cases to be according to native law.

5.* In questions regarding succession, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, bastardy, family-relations, wills, legacies, gifts, partitions, or any religious usage or institution, the rule of decision shall be—

(*a*) any custom applicable to the parties concerned, which is not contrary to justice, equity, or good conscience, and has not been, by this or any other enactment, altered or abolished, and has not been declared to be void by any competent authority;

(*b*) the Muhammadan law, in cases where the parties are Muhammadans, and the Hindu law, in cases where the parties are Hindus, except in so far as such law has been altered or abolished by legislative enactment, or is opposed to the provisions of this Act, or has been modified by any such custom as is above referred to.

Decisions in cases not specially provided for.

6. In cases not otherwise specially provided for, the Judges shall decide according to justice, equity, and good conscience.

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* S. 5 has been substituted by Act XII. of 1878, s. 1.

Act IV. of 1872.

7. All local customs and mercantile usages shall be regarded as valid unless they are contrary to justice, equity, or good conscience, or have, before the passing of this Act, been declared to be void by any competent authority.

Local customs and mercantile usages when valid.

DESCENT OF JAGIRS.

8. In all cases in which Government has declared any rule of descent to prevail in any family or families of assignees of land-revenue, such rule of descent shall be held to prevail, and to have prevailed, amongst them from the time when the declaration was made.

Rule of descent in family of assignee of land-revenue.

PRE-EMPTION.

9.* The right of pre-emption is a right of the persons hereinafter mentioned or referred to, to acquire, in the cases hereinafter specified, immoveable property in preference to all other persons. It arises in respect of sales (whether under a decree or otherwise) of immoveable property and of foreclosures of rights to redeem such property.

Right of pre-emption.

10.* Unless the existence of any custom or contract to the contrary is proved, such right shall, whether recorded in the settlement-record or not, be presumed—

Presumption as to its existence.

(*a*) to exist in all village-communities, however constituted, and

(*b*) to extend to the village-site, to the houses built upon it, to all lands and shares of lands within the village-boundary, and to all transferable rights of occupancy affecting such lands.

11.* The right of pre-emption shall not be presumed to exist in any town or city, or any sub-division thereof, but may be shown to exist therein, and to be exercisable therein by such persons and under such circumstances as the local custom prescribes.

Its existence in towns to be proved.

12.* If the property to be sold or the right to redeem which is to be foreclosed is situate within, or is a share of, a village, the right to buy or redeem such property belongs, in the absence of a custom to the contrary,—

Devolution of right when property to be sold or foreclosed is situate within a village.

(*a*) first, in the case of joint undivided immoveable property, to the co-sharers;

(*b*) secondly, in the case of villages held on ancestral shares, to co-sharers in the village, in order of their relationship to the vendor or mortgagor;

(*c*) thirdly, if no co-sharer or relation of the vendor or mortgagor claims to exercise such right, to the landowners of the patti or other sub-division of the village in which the property is situate, jointly;

(*d*) fourthly, if the landowners of the patti or other sub-division make no joint claim to exercise such right, to such landholders severally;

(*e*) fifthly, to any landholder of the village;

(*f*) sixthly, to the tenants (if any) with rights of occupancy in the property;

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* Ss. 9 to 12 have been substituted by Act XII. of 1878, s. 2.

(*g*) seventhly, to the tenants (if any) with rights of occupancy in the village: Provided that when the property is land, to the trees standing on which the Government is entitled, such right belongs to the Lieutenant-Governor of the Panjáb in preference to all other persons.

Where two or more persons are equally entitled to such right, the vendor or mortgagor may determine which of them shall exercise the same.

Nothing in the former part of this section shall be deemed to affect the Panjáb Tenancy Act,* 1868, section 34; but if a landlord refuse or neglect to exercise the right conferred on him by that section, such right belongs, first, to the tenants (if any) with rights of occupancy in the property concerned, and, secondly, to the tenants (if any) with right of occupancy in the village in which such property is situate.

Notice to pre-emptors.

13.† When any person proposes to sell any property, or to foreclose the right to redeem any property, in respect of which any persons have a right of pre-emption, he shall give notice to the persons concerned of the price at which he is willing to sell such property, or of the amount due in respect of the mortgage, as the case may be.

Such notice shall be given through any Court within the local limits of whose jurisdiction the property or any part thereof is situate, and shall be deemed sufficiently given if it be stuck up on the chaupál or other public place of the village, town, or city in which the property is situate.

Loss of right of pre-emption.

14.† Any person having a right of pre-emption in respect of any property proposed to be sold shall lose such right, unless within three months from the date of giving such notice he pays or tenders to the person so proposing to sell, the price aforesaid or the fair market-value of the property, or deposits the same in the Court from which the notice issued. When any money is so deposited, the Court shall give notice of such deposit to the vendor or mortgagor, as the case may be.

Right of pre-emptor on foreclosure.

15.† When the right of pre-emption arises in respect of the foreclosure of the right to redeem any property, any person entitled to such right may, at any time within three months after the giving of the notice required by section thirteen, pay or tender to the mortgagee or his successor in title the amount specified in such notice, or the amount really due on the footing of the mortgage, and shall thereupon acquire a right to purchase the property.

On completion of the purchase the person exercising the right of pre-emption shall be bound to pay to the mortgagee or his successor in title the amount specified in such notice, together with interest on the principal sum secured by the mortgage, at the rate specified by the instrument of mortgage for any time which has elapsed since the date of the notice, and any additional costs which may have been properly incurred by the mortgagee or his successor in title.

Suit to enforce right of pre-emption.

16.‡ Any person entitled to a right of pre-emption may bring a suit to enforce such right on any of the following grounds (namely):—

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* Act XXVIII. of 1868 was repealed by Act XVI. of 1887, s. 3 and Sch.

† Ss. 13 to 15 have been substituted by Act XII. of 1878, s. 2.

‡ Ss. 16 to 18 have been substituted by Act XII. of 1878, s. 2.

[Act IV. of 1872.

(*a*) that no due notice was given as required by section thirteen;

(*b*) that tender was made under section fourteen or section fifteen, and refused;

(*c*) in the case of a sale, that the price stated in the notice was not fixed in good faith;

(*d*) in the case of a foreclosure, that the amount claimed by the mortgagee was not really due on the footing of the mortgage, or was not claimed in good faith, or that it exceeds the fair market-value of the property mortgaged.

If, in the case of a sale, the Court finds that the price was not fixed in good faith, the Court shall fix such price as appears to it to be the fair market-value of the property sold.

If, in the case of a foreclosure, the Court finds that the amount claimed by the mortgagee was not really due on the footing of the mortgage, or that it was not claimed in good faith, or that it exceeds the fair market-value of the property mortgaged, the amount to be paid to the mortgagee shall not exceed what the Court finds to be such market value.

Power to require payment into Court.

16A.* When any suit is instituted under section sixteen, the Court may in its discretion require the plaintiff to pay into Court the price or market-value of the property, or, in the case of a right to redeem property, the amount really due on the footing of the mortgage, and if such requisition is not complied with in such time as the Court directs, may reject the plaint.

Decree to fix time for payment.

17.* If the Court find for the plaintiff, the decree shall specify a day not being a holiday, on or before which the purchase-money or the amount to be paid to the mortgagee shall be paid.

Effect of non-payment of purchase-money.

18.* If such purchase-money or amount is not paid into Court before it rises on that day, the decree shall become void, and the plaintiff shall, so far only as relates to such sale or foreclosure, lose his right of pre-emption over the property to which the decree relates.

Party to sale by joint-owners cannot withdraw his share and claim pre-emption as to rest.

19. In case of sale by joint-owners, no person who has been a party can withdraw his own share and claim a right of pre-emption as to the rest.

Preferential right of co-sharers in well where chakdári tenure prevails.

20. In villages in which the chakdári tenure prevails, the co-sharers in a well have a right of pre-emption as to shares in such well in preference to a general proprietor in any such village having no share in the well, but merely receiving a haq zamindári from the "chakdárs."

DECREES CONCERNING LAND.

21. [*Repealed by Act XVII. of 1887, s. 2 and Sch.*]

INSOLVENCY.

Power to invest Courts with insolvency-jurisdiction.

22. The Local Government may invest any Court or any class of Courts with insolvency-jurisdiction in any specified local area.

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* Ss. 16 to 18 have been substituted by Act XII. of 1878, s. 2.

Petition to Court for adjudication of insolvency.

23. Any debtor, whose debts amount to rupees five hundred or upwards, and any creditor or creditors, to whom an aggregate sum of not less than rupees five hundred is due from any such debtor, may petition the Court having local insolvency-jurisdiction that the debtor be adjudicated an insolvent.

Procedure of Court thereupon.

24. If it appear that the debtor's liabilities amount to more than rupees five hundred, the Court may—

(1) call upon the debtor to make a statement of his assets and liabilities;

(2) invite by proclamation or otherwise the appearance of persons to record claims against the debtor;

(3) register all claims so recorded;

(4) call upon the debtor to give reasonable security for his appearance, or, on default of reasonable security, order his confinement in the civil jail;

(5) attach all the debtor's property in the Panjáb, moveable or immoveable;

(6) pass an order exempting the person and property of the debtor from further legal process, pending inquiry and the final orders of the Court.

Insolvent defined.

A debtor on whom the order referred to in clause six of this section is passed, is deemed an insolvent.

Insolvent guilty of misconduct may be imprisoned.

25. The Court shall make full inquiry into the origin, nature, and circumstances of the debts, and the conduct of the debtor in relation thereto; and if the insolvent be shown to have been guilty of concealment, fraud, recklessness, or other gross misconduct in reference to the debts, and if his discharge, for that reason, is opposed by any of the creditors, the Court may, at its discretion, award a term of imprisonment in the civil jail not exceeding one year.

Fraudulent transfers in expectation of insolvency may be annulled.

26. If it appear that the debtor, after becoming unable to meet his liabilities, or in expectation of becoming so, has transferred his property, or any part thereof, with a view to defrauding his creditors, or to giving one or more creditors a fraudulent preference over the others, the Court shall annul such transfer, and treat the property transferred as the other property of the debtor.

Power of Court to sell or administer insolvent's estate.

27. The property of the insolvent shall be sold or administered, under the direction of the Court, either through the agency of its own officers or of assignees to be appointed by the Court, in the manner most conducive to the interest of the creditors, and the proceeds shall be divided rateably amongst them.

Power to give effect to compositions.

28. The Court shall give effect to any composition or arrangement agreed upon between the debtor and the majority of the creditors: Provided that no injustice or injury appears to be inflicted by such composition or arrangement on any of the parties concerned, and that no fraud nor collusion is suspected. If any creditor objects to such arrangement, the Court shall decide as to the reasonableness of the objection.

Act IV. of 1872.

29. When the sale or administration of the insolvent's property is complete, the Court may order the insolvent to be discharged, on his signing an agreement to liquidate, from any property which he may subsequently acquire, such portion of his debts as remains unpaid. Such order of discharge shall preclude any creditor whose claim is registered from suing the debtor in respect of such claim, unless it be shown that the debtor has acquired property, since the order of discharge, out of which the claim might have been defrayed.

When Court may order discharge of insolvent.

Effect of order.

30. Nothing in the preceding sections shall apply to persons who may have been admitted to the benefit of any insolvency-law at a presidency-town; nor shall any order passed under the preceding sections affect the remedy of any creditor against his debtor in respect of property which, at the time of the insolvency of such debtor, was not in the Panjáb.

Foregoing rules not to apply to persons admitted to benefit of insolvency-law in presidency-towns.

31. The Chief Court of the Panjáb may, with the sanction of the Local Government, from time to time frame and issue rules, conformable to the provisions hereinbefore contained, for the better administration of insolvent estates, and may, with the like sanction, alter any such rules.

Chief Court empowered to frame rules.

32. The Local Government may at any time, with the previous sanction of the Governor-General in Council, exclude any particular class or race from the operation of these rules.

Power to exclude any class from operation of such rules.

33. [*Repealed by Act XII. of 1891, Sch. I.*]

MINORS AND THE COURT OF WARDS.

34. Deputy Commissioners shall be Courts of Wards within their respective districts, but shall exercise the functions of such Courts subject to the control of the Commissioner and Financial Commissioner.

Bar of jurisdiction in certain cases.

35.* The Court of Wards may, at its discretion, take charge of, and administer, the estates of all disqualified persons, that is to say:—

Jurisdiction of Court of Wards.

(*a*) females deemed by the Local Government incompetent to manage their estates;

(*b*) persons who have not completed the age of eighteen years;

(*c*) idiots;

(*d*) lunatics;

(*e*) persons declared by the Local Government incapable, owing to physical defects or infirmities, of managing their own estates;

(*f*) persons convicted of a non-bailable offence, and unfitted, in the opinion of the Local Government, by vice or bad character, to manage their estates;

(*g*) persons declared by the Local Government, on their own application, to be unfitted to manage their estates:

* S. 35 has been substituted by Act XII. of 1878, s. 3.

Act IV. of 1872.

Proviso.

Provided that the Court of Wards shall not take charge of, or administer, the estate of any person of any of the classes mentioned in clauses (*a*), (*b*), (*c*), and (*d*) of this section, unless he has inherited a beneficial interest in an estate for which a settlement was made with his ancestor, or in respect of which he would have been entitled to be settled with, if he had been competent to make an agreement for the payment of revenue, or unless he is the holder by inheritance of an assignment of land-revenue:

Further proviso.

Provided also that the Court of Wards shall not take charge of, or administer any beneficial interest in, an estate in which more persons than one have a joint undivided interest, unless all such persons are so circumstanced as to be subject to the Court of Wards.

Deputy Commissioner may inquire into circumstances affecting jurisdiction.

36. The Deputy Commissioner may make an inquiry into the minority, lunacy, or idiocy of any person, who, he has reason to believe, would, if found to be a minor, lunatic, or idiot, be subject to the jurisdiction of the Court of Wards, and into the circumstances and property of any such person, and may make an order declaring such person to be subject to the jurisdiction of the Court of Wards.

Appeal to Commissioner against order under section 36.

37. Any such person may appeal to the Commissioner of the Division against any such order on the ground that he is not, or has ceased to be, a minor, or that he is not, or has ceased to be, a lunatic or idiot, and the decision of the Commissioner shall be certified to the Court of Wards, and shall be final.

Extent of jurisdiction.

38. The jurisdiction of the Court of Wards shall extend to the care and education, and to the management of the property, of the persons subject thereto; and the Local Government shall make rules as to the manner in which, and the agents by whom, such jurisdiction shall be exercised.*

Persons whose property is under the superintendence of the Court of Wards shall not be competent to create, without the sanction of the Court, any charge upon, or interest in such, property or any part thereof.†

CRIMINAL JUDICATURE.

Indian Penal Code to apply to offences committed previous to first January 1862.

39. The provisions of the Indian Penal Code, with the exception of Chapter VI., shall be applicable to all offences committed before first January 1862, in territory which was, at the time of the commission of such offence, subject to the Government of the Panjáb:

Saving of privileges conferred on certain Chiefs.

Provided that nothing contained in this section shall affect any privilege conferred on certain Chiefs in the Panjáb by the Governor-General in Council, or by the Board of administration for the affairs of the Panjáb, nor any indemnity or pardon granted by competent authority.

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* See *Panjáb Gazette*, 31st July 1873, p. 402.

† In s. 38, the second clause has been added by Act XII. of 1878, s. 4.

Act IV. of 1872.

Power to establish system of village-watchmen and municipal-watchmen, and to make rules.

39A.* The Local Government may establish a system of village-watchmen or municipal-watchmen in any part of the territories under its administration, and in furtherance of this object may, from time to time, make rules to provide for the following matters :—

(*a*) the definition of the limits of watchmen's beats ;

(*b*) the determination of the several grades of watchmen, and the number of each grade to be appointed to each beat :

(*c*) the appointment, suspension, dismissal, and resignation of watchmen of each grade ;

(*d*) the equipment and discipline of, and the control and supervision over, such watchmen ;

(*e*) the conferring upon them, and the exercise by them, of any powers, and the enjoyment by them of any protection or privilege, which may be exercised and enjoyed by a police-officer under any law for the time being in force ;

(*f*) the performance by them of such duties relating to police, sanitation or statistics, or for the benefit of the village-communities or municipalities within their respective beats, as the Local Government thinks fit ;

(*g*) the exercise of authority over, and the rendering of aid to, such watchmen by headmen of the villages or members of the Municipal Committees of the towns comprised in their respective beats ;

(*h*) the performance, by the headmen of villages comprised in the beat of any watchman, of any of the duties of a village-watchman in aid of, or substitution for, such watchman ;

(*i*) the exercise, by such village-headmen for the purposes referred to in clauses (*g*) and (*h*), or by members of Municipal Committees for the purposes referred to in clause (*g*) of this section, of any of the powers, and the enjoyment by such headmen or members of any privilege or protection, of a village-watchman or a municipal-watchman as the case may be ;

(*j*) the determination of the rate at which, and the mode in which, watchmen shall be paid, and, in the case of village-watchmen, of the mode in which their pay, the expenses of their equipment, and other charges connected with the village-watchman system shall be provided for, whether out of cesses or funds already leviable or available in the villages comprised in the beat, or by a special tax in money or kind to be imposed on any class of persons residing or owning property in, or resorting to, such villages, or partly in one of these ways and partly in the other ;

(*k*) the collection with or without the aid of the village-headmen, and by any process available for the realization of the land-revenue, of any tax imposed under clause (*j*) of this section, and the application of, and the mode of accounting for, the same ; and generally for

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* Ss. 39A and 39B have been substituted by Act XXIV. of 1881, s. 2, for those originally added by Act XV. of 1875.

(*l*) the efficient working of the system of village-watchmen or municipal-watchmen: Act IV. of 1872.

Provided—

1st,—that the rules to be made regarding the appointment of village-watchmen shall allow to the headmen of the villages comprised in the beat to which such a watchman is to be appointed, a power of nomination to be exercised in such manner, and subject to such reasonable conditions, as may be prescribed by such rules;

2ndly,—that the rules to be made under clause (*j*) of this section with regard to village-watchmen shall include provisions for recording and securing due consideration of the views and opinions on the matters therein referred to of the headmen of the villages comprised in each beat.

39B.* Every person is bound to render to a village-watchman, or municipal-watchman, or village-headman discharging the duties of a police-officer under the rules made hereunder, all the assistance which he is bound to render to a police-officer.

Obligation to assist watchmen and headmen.

Any person who obstructs such watchman or headman in the discharge of such duties may be arrested without warrant by a police-officer or by any watchman or village-headman empowered in this behalf by the Local Government.

Person obstructing watchman or headman may be arrested without warrant.

39C.† Whenever it seems to the Local Government expedient that the duties of watch and ward and other internal police-service of any town or village not comprised within the limits of a municipality, or within the limits of village-watchman's beat as defined under the power conferred by section thirty-nine A, should be performed by police-officers enrolled under Act V. of 1861, the Local Government may direct that the said service shall be so performed, and may also, with the previous sanction of the Governor-General in Council, direct that the charges for the time being fixed by such Government on account of such service shall be defrayed by taxes to be levied in such town or village.

Power to direct local taxation for payment of police enrolled under Act V. of 1861.

39D.† When the Local Government has, under section thirty-nine C, directed that taxes shall be levied in any town or village, the Deputy Commissioner may from time to time issue a public notice in such town or village, explaining the nature of the taxes he proposes to levy.

Issue of notice of taxes proposed to be levied.

Any inhabitant of such town or village objecting to the taxation thus proposed may, within fifteen days from the publication of such notice, send his objection in writing to the Deputy Commissioner.

Objections to taxation.

After the expiry of fifteen days from the publication of the notice, the Deputy Commissioner may submit, for the information of the Local Government, a report of the proposal made by him. Such report shall contain specific mention of the objections, if any, urged to his proposal, and his opinion on such objections.

Procedure thereon.

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* Ss. 39A and 39B have been substituted by Act XXIV. of 1881, s. 2, for those originally added by Act XV. of 1875.

† Ss. 39C to 39G have been added by Act XV. of 1875, s. 2.

Act IV. of 1872.

No such tax shall be levied until it has, upon such report, been approved by the Local Government.

Power to fix rates of tax.

39E.* When any such tax has been so approved by the Local Government, the Deputy Commissioner may from time to time, subject to such rules consistent with this Act as the Local Government may from time to time prescribe, determine the rates at which it is to be levied.

Power to make rules for collection of taxes.

39F.* The Local Government may, from time to time, make rules to provide for the collection of such taxes by any process available for the realization of the land-revenue, and to regulate the application and mode of accounting for the same.

39G.* [*Repealed by Act XII. of 1891, Sch. I.*]

HONORARY POLICE-OFFICERS.

Local Government may confer powers of police-officer.

40. The Local Government may, if it thinks fit, confer on any person any of the powers which may be exercised by a police-officer under any Act for the time being in force, "and may withdraw any powers so conferred."†

TRACK LAW.

Trackers may call for assistance in carrying on tracks.

41. When an offence is, has been, or may reasonably be supposed to have been, committed, and the tracks of the persons who may reasonably be supposed to have committed such offence, or of any animal or other property reasonably supposed to be connected with such offence, are followed to a spot within the immediate vicinity of a village, the person following such tracks may call upon any headman or village-watchman in such village to assist in carrying on the tracks.

Penalty for withholding assistance or conniving at offence or escape.

42. If such headman or watchman do not forthwith give such assistance, or if the inhabitants of such village do not afford full opportunity for search in their houses for the offenders, or if, from the circumstances of the case, there shall appear good reason to believe that the inhabitants of such village, or any of them, were conniving at the offence, or at the escape of the offenders, and such offenders cannot be traced beyond the village, the Magistrate of the district may, with the previous sanction of the Commissioner of the Division, inflict a fine upon such village not exceeding five hundred rupees, except in the case of stolen property over five hundred rupees in value, in which case the fine shall not exceed the value of such property.

Limit to fine.

Appeal to Chief Court.

An appeal against all convictions under this section shall lie to the Chief Court.

Fine may be awarded to injured parties, and fee to tracker.

The Magistrate may direct that the fine imposed under this section, or any part thereof, shall be awarded to any persons injured by such offence in compensation for such injury; and, in the case of stolen property recovered through the agency of a tracker, may direct that such property be not restored

* Ss. 39 C to 39 G have been added by Act XV. of 1875, s. 2.

† In s. 40 the words quoted have been added by Act XII. of 1878, s. 5.

to its owner until he has paid to such tracker such fee, not exceeding one-fourth part of the value of the stolen property, as to the said Magistrate seems fit. Act IV. of 1872.

SLAUGHTER OF KINE.

Control of slaughter of kine and sale of beef.

43.* The slaughter of kine and the sale of beef shall not take place, except subject to rules to be from time to time, either generally or in any particular instance, prescribed by the Local Government.

ARMED MEN AND FOREIGN VAGRANTS.

Control of entry into towns of bands of armed men.

44.* No band of armed men shall enter into any city or town, except subject to rules to be from time to time, either generally or in any particular instance, prescribed by the Local Government.

Powers of Magistrate of district as to foreign vagrants.

45. The Magistrate of the district may, if he considers that any band of foreign vagrants is likely to occasion a breach of the peace or to commit any offence under the Indian Penal Code, prohibit such band from entering his district; or, if they are already in his district, may require them within a given time to leave it.

Surveillance, &c., of band failing to comply with Magistrate's order.

46. If any such band fail to comply with the orders of the said Magistrate within the prescribed period, he shall report the matter to the Local Government, and the Local Government may give such directions for the surveillance, control, or deportation of such band, as to it seems fit.

MISCELLANEOUS.

Crossing of streams on buoys or skins.

47.* No person shall cross any river or stream on a buoy or inflated skin, nor shall have in his possession or custody any buoy or skin for the purpose of being used in crossing any river or stream, except subject to rules to be from time to time, either generally or in any particular instance, prescribed by the Local Government.

Use of pasturage or natural product of Government land.

48. No person shall make use of the pasturage or other natural product of any land being the property of the Government, except with the consent and subject to rules to be from time to time, either generally or in any particular instance, prescribed by the Local Government.

49. [*Repealed by Act I. of 1878, s. 2 and sch.*]

Power to make rules as to matters mentioned in sections 43 to 49.

50.† The Local Government may from time to time make rules as to the matters mentioned in sections 43 to 49‡ inclusive.

Existing rules.

All existing rules upon such matters, which might have been made under this section had it been in force, shall be deemed to have been made hereunder.

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* In ss. 43, 44, and 47, the words, "with the consent and," being repealed by Act II. of 1878, s. 6, have been omitted.

† Ss. 50, 50 A, and 50 B, have been substituted for s. 50 by Act XV. of 1875, s. 3.

‡ In s. 50 read now s. 48.

Act IV. of 1872.

Conditions of validity of rules hereafter made under this Act.

50A.* No rules hereafter made by the Local Government under any power conferred by this Act shall be valid unless—

(*a*) they are consistent with the laws for the time being in force in the Panjáb;

(*b*) they are published in the official Gazette;

(*c*) previous to such publication they are sanctioned by the Governor-General in Council.

Penalties for breach of such rules.

50.B* The Local Government may, in making any rule under any of the powers conferred by this Act, attach to the breach of it, in addition to any other consequences that would ensue from such breach, a punishment on conviction before a Magistrate not exceeding six months' imprisonment, or three hundred rupees fine, or both.

Republication of rules and orders.

51. All rules which the Local Government is empowered to issue under this Act, and all circulars issued by the Chief Court, shall, with the previous sanction of the Governor-General in Council, be republished once at least in every year; and upon such republication, shall be arranged in the order of their subject-matter; and all such alterations or amendments as may have been made in the course of the preceding year, or may have become necessary or advisable, shall be embodied therewith; and upon such republication all such rules and circulars, previously issued, shall be repealed.

52.† [*Repealed by Act X. of 1879, s. 2.*]

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* Ss. 50, 50A, and 50B, have been substituted for s. 50 by Act XV. of 1875, s. 3.

† S. 52 was added by Act XII. of 1878, s. 8.

SCHEDULE I.*

ENACTMENTS DECLARED TO BE IN FORCE.

Explanation.—This schedule does not refer to any Act which is in its terms applicable to the Panjáb, or which has been extended to the Panjáb by competent authority.

Number and year.	Title.	Extent to which the enactment is in force.
Reg. I. of 1798† ...	A Regulation to prevent Fraud and Injustice in Conditional Sales of Land under Deeds of Bai-bil-wafa, or other Deeds of the same nature.	The whole, except such parts as relate to interest.
Reg. X. of 1804 ...	A Regulation for declaring the Powers of the Governor-General in Council to provide for the immediate punishment of certain Offences against the State by the sentence of Courts-martial.	The whole, so far as it is not modified by Act V. of 1841.
Reg. XVII. of 1806† ...	A Regulation for extending to the province of Benares the Rates of Interest on future Loans, and Provisions relative thereto, contained in Regulation XV., 1793; also for a general extension of the period fixed by Regulations I., 1798, and XXXIV., 1803, for the redemption of Mortgages and Conditional Sales of Land, under Deeds of Bai-bil-wafa, Katkabála, or other similar designation.	Sections seven and eight.
Reg. III. of 1818 ...	A Regulation for the Confinement of State Prisoners.	The whole.
Reg. XI. of 1825 ...	A Regulation for declaring the Rules to be observed in determining Claims to Lands gained by alluvion or by dereliction of a river or the sea.	The whole.
Act XL. of 1858‡ ...	An Act for making better provision for the care of the persons and property of minors in the Presidency of Fort William in Bengal.	The whole.

* So much of Act IV. of 1872 as relates to Regs. V. of 1817 and XX. of 1825 was repealed by Acts VI. of 1878, s. 2 and sch., and X. of 1882, s. 2 and Sch. I. (*b*), respectively. The references to these Regulations in this schedule have therefore been omitted.

† So much of Act IV. of 1872 as relates to Regs. I. of 1798 and XVII. of 1806 will be repealed when Act IV. of 1882 is extended to the Panjáb.—See ss. 1 and 2, and sch. (*b*), *ib.*

‡ Act IV. of 1872 has been repealed so far as it relates to Act XL. of 1858.—See Act VIII. of 1890, s. 2 and sch.

Act IV. of 1872.

SCHEDULE I.—(*continued*).

ENACTMENTS DECLARED TO BE IN FORCE—(*continued*).

Number and year.	Title.	Extent to which the enactment is in force.
Act XVII. of 1861* ...	An Act to amend Act XIV. of 1843 (for regulating the Customs Duties in the North-Western Provinces).	The whole, the word "Panjáb" being substituted for the words "North-Western Provinces."
	"Rules for the conservancy of Forests and Jungles in the Hill Districts of the Panjáb Territories, sanctioned by the Governor-General in Council, in letter of the Secretary to the Government of India, No. 1789, 21st May 1855."	The whole.

SCHEDULE II.

ENACTMENTS REPEALED.

Number and year.	Title.	Extent of repeal.
	All Bengal Regulations now in force in the Panjáb, except those specified in Schedule I.	The whole.
	All rules, laws, and regulations made for the Panjáb and its Dependencies, or for any part thereof, by the Governor-General of India, or the Governor-General of India in Council, or the Lieutenant-Governor of the Panjáb, otherwise than at meetings for making laws and regulations in conformity with the provisions of the Acts of the 3rd and 4th years of King William the Fourth, chapter eighty-five, and of the 16th and 17th years of Her Majesty, chapter ninety-five, or other Act in force for the time being except those specified in Schedule I.	The whole.

* Act XVII. of 1861 was repealed by Act VIII. of 1875, s. 2 and sch. The First Schedule of Act IV. of 1872, so far as it relates to Act XVII. of 1861, has been repealed by Act XII. of 1891, Sch. I.

SCHEDULE II.—(*continued*). Act V. of 1872.

ENACTMENTS REPEALED—(*continued*).

Number and year.	Title.	Extent of repeal.
Act VI. of 1846 ...	An Act for the more convenient administration of the government of the country called the Bhatti Territory.	The whole.
Act I. of 1847 ...	An Act for the establishment and maintenance of Boundary-marks in the North-Western Provinces of Bengal.	The whole, so far as it affects the Panjáb.
Act III. of 1870 ...	An Act to remove the Agror Valley from the jurisdiction of the tribunals established under the general Regulations and Acts, and for other purposes.	The whole, so far as it is unrepealed.

ACT V. OF 1872.

RECEIVED THE G.-G.'S ASSENT ON THE 28TH MARCH 1872.

An Act to remove doubts as to the jurisdiction of the High Court of Bombay over the Province of Sindh.

Preamble.

WHEREAS it is expedient to remove doubts which have arisen as to the jurisdiction of the High Court of Bombay over the Province of Sindh; It is hereby enacted as follows:—

Bar of jurisdiction in Sindh of Bombay High Court.

1. The High Court of Bombay has not, and shall be deemed never to have had, jurisdiction over the Province of Sindh.

Saving of Act XXIV. of 1867.

2.* Nothing herein contained shall be deemed to affect the Administrator-General's Act, 1874.†

Saving of probates and administrations.

3.* Nothing herein contained shall be deemed to invalidate the grant of any probate or letters of administration heretofore or hereafter made by the High Court of Judicature at Bombay, or to affect the rights, powers, or duties of any executor or administrator under, or by virtue of, any such probate or letters.

Saving of High Court's criminal jurisdiction.

4.* Nothing herein contained shall be deemed to affect the criminal jurisdiction of the said High Court so far as regards European British subjects of Her Majesty.

* Ss. 2, 3, and 4, were added to this Act by Act XX. of 1872.

† In s. 2 the figures "1874" have been substituted for the figures "1867" by Act XI. of 1891, Sch. II.

Act IX. of 1872.

ACT IX. OF 1872.*

THE INDIAN CONTRACT ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 25TH APRIL 1872.

Preamble.

WHEREAS it is expedient to define and amend certain parts of the law relating to contracts; It is hereby enacted as follows :—

PRELIMINARY.

Short title.

1. This Act may be called "The Indian Contract Act, 1872."

Extent.

Commencement.

It extends to the whole of British India; and it shall come into force on the first day of September 1872.†

Enactments repealed.

The enactments mentioned in the schedule hereto are repealed to the extent specified in the third column thereof; but nothing herein contained shall affect the provisions of any Statute, Act,‡ or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract not inconsistent with the provisions of this Act.

Interpretation-clause.

2. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context :—

"Proposal."

(*a*)—When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal :

"Promise."

(*b*.)—When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted,§ becomes a promise :

"Promisor" and "promisee."

(*c*.)—The person making the proposal is called the 'promisor,' and the person accepting the proposal is called the 'promisee :'

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* Act IX. of 1872 has been declared in force in the town of Mandalay.—See the Second Part of the Second Schedule to Act XX. of 1886.

It is included in the Schedule to the Santál Parganas Laws Regulation.—See Regulation III. of 1886, s. 6.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	See *Gazette of India*	Oct. 22, 1881, Pt. I., p. 504.
The North-Western Provinces Tarái	Ditto	Oct. 22, 1876, Pt. I., p. 505.

The chapters and sections of the Transfer of Property Act, 1882, which relate to contracts, are (in places in which that Act is in force) to be taken as part of this Act.—See Act IV. of 1882, s. 4.

† That it is not retrospective, see 12 B. L. R. 472.

‡ See, for instance, Act XVIII. of 1854, s. 12.

§ But see s. 4, ill. *b*, *infra*.

(*d.*)—When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise :

"Consideration."

(*e.*)—Every promise and every set of promises, forming the consideration for each other, is an agreement :

"Agreement."

(*f.*)—Promises which form the consideration or part of the consideration for each other are called reciprocal promises :

"Reciprocal promises."

(*g.*)—An agreement not enforceable by law is said to be void :

"Void agreement."

(*h.*)—An agreement enforceable by law is a contract :

"Contract."

(*i.*)—An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract :

"Voidable contract."

(*j.*)—A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

"Void contract."

CHAPTER I.—OF THE COMMUNICATION, ACCEPTANCE, AND REVOCATION OF PROPOSALS.

3. The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting, or revoking, by which he intends to communicate such proposal, acceptance, or revocation, or which has the effect of communicating it.

Communication, acceptance, and revocation of proposals.

4. The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

Communication, when complete.

The communication of an acceptance is complete,

as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor ;

as against the acceptor, when it comes to the knowledge of the proposer.

The communication of a revocation is complete,

as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it ;

as against the person to whom it is made, when it comes to his knowledge.

Illustrations.

(*a.*) A proposes, by letter, to sell a house to B at a certain price.

The communication of the proposal is complete when B receives the letter.

(*b.*) B accepts A's proposal by a letter sent by post.

The communication of the acceptance is complete,

as against A when the letter is posted ;

as against B when the letter is received by A.

(*c.*) A revokes his proposal by telegram.

The revocation is complete as against A when the telegram is despatched. It is complete as against B when B receives it.

B revokes his acceptance by telegram. B's revocation is complete as against B, when the telegram is despatched, and as against A when it reaches him.

Act IX. of 1872.

Revocation of proposals and acceptances.

5. A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Illustration.

A proposes, by a letter sent by post, to sell his house to B.

B accepts the proposal by a letter sent by post.

A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

Revocation how made.

6 A proposal is revoked—

(1) by the communication of notice of revocation by the proposer to the other party;

(2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time without communication of the acceptance;

(3) by the failure of the acceptor to fulfil a condition precedent to acceptance; or

(4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

Acceptance must be absolute.

7. In order to convert a proposal into a promise the acceptance must—

(1) be absolute and unqualified;

(2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist, that his proposal shall be accepted in the prescribed manner, and not otherwise; but, if he fails to do so, he accepts the acceptance.

Acceptance by performing conditions or receiving consideration.

8. Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

Promises, express and implied.

9. In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

CHAPTER II.—OF CONTRACTS, VOIDABLE CONTRACTS, AND VOID AGREEMENTS.

What agreements are contracts.

10. All agreements are contracts* if they are made by the free consent of parties competent to contract, for a lawful consideration,† and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in British India, and not hereby expressly repealed, by which any contract is required to be made in

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* See s. 2, cl. *h*, *supra*.

† See s. 25, expl. 2, and s. 102, *infra*.

writing* or in the presence of witnesses, or any law relating to the registration of documents.† Act IX. of 1872.

Who are competent to contract.

11. Every person is competent to contract who is of the age of majority according to the law to which he is subject,‡ and who is of sound mind and is not disqualified from contracting by any law to which he is subject.

What is a sound mind for the purposes of contracting.

12. A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it, and of forming a rational judgment as to its effect upon his interests.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.§

Illustrations.

(*a.*) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(*b.*) A sane man, who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract, or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

"Consent" defined.

13. Two or more persons are said to consent when they agree upon the same thing in the same sense.

"Free consent" defined.

14. Consent is said to be free when it is not caused by—

(1) coercion, as defined in section fifteen, or

(2) undue influence, as defined in section sixteen, or

(3) fraud as defined in section seventeen, or

(4) misrepresentation, as defined in section eighteen, or

(5) mistake, subject to the provisions of sections twenty, twenty-one, and twenty-two.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation, or mistake.

"Coercion" defined.

15. "Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Explanation.—It is immaterial whether the Indian Penal Code is or is not in force in the place where the coercion is employed.

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* See, *e.g.*, s. 25, *infra*, and Act XX. of 1847, s. 5 (*assignment of copyright*): Act XXXI. of 1854, ss. 14, 18 (*conveyances of interests in immoveable property, in cases to which English law is applicable*): 17 and 18 Vic., c. 104, s. 55 (*transfers of registered ships or shares therein*): Act XI. of 1876, s. 9 (*contracts on behalf of Presidency Banks*): Act IV. of 1882, ss. 54, 59, 107, and 123 (*sales, mortgages, leases, and gifts of immoveable property*): Act VI. of 1882, ss. 6, 39, 46, 67 (*memorandum of association, articles of association, transfer of shares, contracts on behalf of company*).

† See now Act III. of 1877.

‡ See Act IX. of 1875. For exception to this rule in the case of emigrants, see Act I. of 1882, s. 11, and Act XXI. of 1883, s. 39.

§ But see s. 68, *infra*.

Illustration.

A. on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to criminal intimidation under the Indian Penal Code.

A afterwards sues B for breach of contract at Calcutta.

A has employed coercion, although his act is not an offence by the law of England, and although section 506 of the Indian Penal Code was not in force at the time when, or place where, the act was done.

"Undue influence" defined.

16. "Undue influence" is said to be employed in the following cases:—

(1.)—When a person in whom confidence is reposed by another, or who holds a real or apparent authority over that other, makes use of such confidence or authority for the purpose of obtaining an advantage over that other, which, but for such confidence or authority, he could not have obtained:

(2.)—When a person, whose mind is enfeebled by old age, illness, or mental or bodily distress, is so treated as to make him consent to that to which, but for such treatment, he would not have consented, although such treatment may not amount to coercion.

"Fraud" defined.

17. "Fraud" means and includes any of the following acts committed by a party to a contract,* or with his connivance, or by his agent,† with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:*—

(1.)—The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

(2.)—The active concealment of a fact by one having knowledge or belief of the fact;

(3.)—A promise made without any intention of performing it;

(4.)—Any other act fitted to deceive;

(5.)—Any such act or omission as the law specially declares to be fraudulent

Explanation.—Mere silence as to facts likely to affect the willingness of a person to enter into a contract* is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak,‡ or unless his silence is, in itself, equivalent to speech.

Illustrations.

(*a.*) A sells, by auction, to B, a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud in A.

(*b.*) B is A's daughter and has just come of age. Here, the relation between the parties would make it A's duty to tell B if the horse is unsound.

(*c.*) B says to A, "If you do not deny it, I shall assume that the horse is sound." A says nothing. Here A's silence is equivalent to speech.

(*d.*) A and B, being traders, enter upon a contract.* A has private information of a change in prices which would affect B's willingness to proceed with the contract.* A is not bound to inform B.

"Misrepresentation" defined.

18. "Misrepresentation" means and includes—

(1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him;

(3) causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement.

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* *Read* 'agreement.' † Compare s. 238, *infra*. ‡ See s. 143, *infra*.

19. When consent to an agreement is caused by coercion, undue influence, fraud, or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

Voidability of agreements without free consent.

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

Exception.—If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section seventeen, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

Explanation.—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

Illustrations.

(*a.*) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A's factory, and thereby induces B to buy the factory. The contract is voidable at the option of B.

(*b.*) A, by a misrepresentation, leads B erroneously to believe that five hundred maunds of indigo are made annually at A's factory. B examines the accounts of the factory which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation.

(*c.*) A fraudulently informs B that A's estate is free from incumbrance. B thereupon buys the estate. The estate is subject to a mortgage. B may either avoid the contract or may insist on its being carried out and the mortgage-debt redeemed.*

(*d.*) B, having discovered a vein of ore on the estate of A, adopts means to conceal and does conceal, the existence of the ore from A. Through A's ignorance B is enabled to buy the estate at an under-value. The contract is voidable at the option of A.

(*e.*) A is entitled to succeed to an estate at the death of B; B dies: C, having received intelligence of B's death, prevents the intelligence reaching A, and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A.

20. Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

Agreement void where both parties are under mistake as to matter of fact.

Explanation.—An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement is not to be deemed a mistake as to a matter of fact.

Illustrations.

(*a.*) A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Bombay. It turns out that, before the day of the bargain, the ship conveying the cargo had been cast away, and the goods lost. Neither party was aware of these facts. The agreement is void.

(*b.*) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

(*c.*) A, being entitled to an estate for the life of B, agrees to sell it to C. B was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.

21. A contract is not voidable because it was caused by a mistake as to any law in force in British India; but a mistake as to a law not in force in British India has the same effect as a mistake of fact.

Effect of mistake as to law.

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* *Read* 'paid off' or 'discharged.'

Act IX. of 1872.

Illustration.

A and B make a contract grounded on the erroneous belief that a particular debt is barred by the Indian Law of Limitation. The contract is not voidable.

A and B make a contract grounded on an erroneous belief as to the law regulating bills of exchange in France. The contract is voidable.

Contract caused by mistake of one party as to matter of fact.

22. A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

What considerations and objects are lawful, and what not.

23. The consideration or object of an agreement is lawful, unless—

it is forbidden by law ;* or

is of such a nature that, if permitted, it would defeat the provisions of any law ; or

is fraudulent ; or

involves or implies injury to the person or property of another ; or the Court regards it as immoral† or opposed to public policy.‡

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement, of which the object or consideration is unlawful, is void.

Illustrations.

(*a.*) A agrees to sell his house to B for 10,000 rupees. Here B's promise to pay the sum of 10 000 rupees is the consideration for A's promise to sell the house, and A's promise to sell the house is the consideration for B's promise to pay the 10,000 rupees. These are lawful considerations.

(*b.*) A promises to pay B 1,000 rupees at the end of six months, if C, who owes that sum to B, fails to pay it. B promises to grant time to C accordingly. Here the promise of each party is the consideration for the promise of the other party, and they are lawful considerations.

(*c.*) A promises, for a certain sum paid to him by B, to make good to B the value of his ship if it is wrecked on a certain voyage. Here A's promise is the consideration for B's payment, and B's payment is the consideration for A's promise ; and these are lawful considerations.

(*d.*) A promises to maintain B's child, and B promises to pay A 1,000 rupees yearly for the purpose. Here, the promise of each party is the consideration for the promise of the other party. They are lawful considerations.

(*e.*) A, B, and C enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

(*f.*) A promises to obtain for B an employment in the public service, and B promises to pay 1,000 rupees to A. The agreement is void, as the consideration for it is unlawful.

(*g.*) A, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B is void, as it implies a fraud by concealment by A on his principal.

(*h.*) A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

(*i.*) A's estate is sold for arrears of revenue under the provisions of an Act of the legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction, in effect, a purchase by the defaulter, and would so defeat the object of the law.

(*j.*) A, who is B's mukhtar, promises to exercise his influence, as such, with B in favour of C, and C promises to pay 1,000 rupees to A. The agreement is void, because it is immoral.

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* See ss. 26, 27, 28, 30, *infra*. † See 9 B. L. R., App., 37.

‡ See 4 B. L. R., O. C. J., 1 ; 9 B. L. R., App., 38 ; 11 B. L. R. 129.

(*e*.) A agrees to let her daughter to hire to B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Indian Penal Code.

Void Agreements.

Agreements void if considerations and objects unlawful in part.

24 If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

Illustration.

A promises to superintend, on behalf of B, a legal manufacture of indigo and an illegal traffic in other articles. B promises to pay to A a salary of 10,000 rupees a year. The agreement is void, the object of A's promise, and the consideration for B's promise, being in part unlawful.

Agreement without consideration void, unless—

25. An agreement made without consideration is void unless—

it is in writing and registered,

(1) it is expressed in writing and registered under the law for the time being in force for the registration of documents,* and is made on account of natural love and affection between parties standing in a near relation to each other; or unless

or is a promise to compensate for something done,

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless

or is a promise to pay a debt barred by limitation-law,

(3) it is a promise, made in writing, and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.†

In any of these cases, such an agreement is a contract.

Explanation 1.— Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2.—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Illustrations.

(*a*.) A promises, for no consideration, to give to B Rs. 1,000. This is a void agreement.

(*b*.) A, for natural love and affection, promises to give his son, B, Rs. 1,000. A puts his promise to B into writing, and registers it. This is a contract.

(*c*.) A finds B's purse and gives it to him. B promises to give A Rs. 50. This is a contract.

(*d*.) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.

(*e*) A owes B Rs. 1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay Rs. 500 on account of the debt. This is a contract.

(*f*) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A's consent to the agreement was freely given. The agreement is a contract, notwithstanding the inadequacy of the consideration.

(*g*.) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A denies that his consent to the agreement was freely given. The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A's consent was freely given.

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* See now Act III. of 1877. The word "documents" has been substituted for the word "assurances" by Act XII. of 1891.

† See now Act XV. of 1877.

Act IX. of 1872.

Agreement in restraint of marriage void.

26. Every agreement in restraint of the marriage of any person, other than a minor,* is void.

Agreement in restraint of trade void.

27. Every agreement by which any one is restrained from exercising† a lawful profession, trade, or business of any kind, is to that extent void.

Saving of agreement not to carry on business of which good-will is sold;

Exception 1.—One who sells the good-will of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the good-will from him, carries on a like business therein, provided that such limits appear to the Court reasonable, regard being had to the nature of the business.

of agreement between partners prior to dissolution;

Exception 2.—Partners may, upon or in anticipation of a dissolution of the partnership, agree that some or all of them will not carry on a business similar to that of the partnership within such local limits as are referred to in the last preceding exception.

or during continuance of partnership.

Exception 3.—Partners may agree that some one or all of them will not carry on any business other than that of the partnership during the continuance of the partnership.

Agreements in restraint of legal proceedings void.

28. Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

Saving of contract to refer to arbitration dispute that may arise.

‡ *Exception 1.*—This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.‡

Saving of contract to refer questions that have already arisen.

Exception 2.—Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.

Agreements void for uncertainty.

29. Agreements, the meaning of which is not certain, or capable of being made certain, are void.

Illustrations.

(*a.*) A agrees to sell to B 'a hundred tons of oil.' There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

(*b.*) A agrees to sell to B one hundred tons of oil of a specified description known as an article of commerce. There is no uncertainty here to make the agreement void.

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* During his or her minority, as to which see Act IX. of 1875.

† These words "do not mean an absolute restriction, and are intended to apply to a partial restriction a restriction limited to some particular place." Per Couch, C.J., 14 B. L. R. 85.

‡ The second clause of this exception, having been repealed by the Specific Relief Act, 1877, which extends to the whole of British India except the Scheduled Districts (see Act I. of 1877, ss. 1 and 2), has been omitted.

(*c*.) A, who is a dealer in cocoanut-oil only, agrees to sell to B 'one hundred tons of oil.' The nature of A's trade affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of cocoanut-oil.

(*d*.) A agrees to sell to B 'all the grain in my granary at Ramnagar.' There is no uncertainty here to make the agreement void.

(*e*.) A agrees to sell to B 'one thousand maunds of rice at a price to be fixed by C.' As the price is capable of being made certain, there is no uncertainty here to make the agreement void.

(*f*.) A agrees to sell to B 'my white horse for rupees five hundred or rupees one thousand.' There is nothing to show which of the two prices was to be given. The agreement is void.

Agreements by way of wager void.

30. Agreements by way of wager are void, and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.

Exception in favour of certain prizes for horse-racing.

This section shall not be deemed to render unlawful a subscription or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize, or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse-race.*

Section 294A of the Indian Penal Code not affected.

Nothing in this section shall be deemed to legalize any transaction connected with horse-racing, to which the provisions of section 294A of the Indian Penal Code apply.

CHAPTER III.—OF CONTINGENT CONTRACTS.

"Contingent contract" defined.

31. A 'contingent contract' is a contract to do or not to do something, if some event collateral to such contract does or does not happen.

Illustration.

A contracts to pay B Rs. 10,000 if B's house is burnt. This is a contingent contract.

Enforcement of contracts contingent on an event happening.

32. Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened.

If the event becomes impossible, such contracts become void.

Illustrations.

(*a*.) A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced by law unless and until C dies in A's lifetime.

(*b*.) A makes a contract with B to sell a horse to B at a specified price if C, to whom the horse has been offered, refuses to buy him. The contract can not be enforced by law unless and until C refuses to buy the horse.

(*c*.) A contracts to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.

Enforcement of contracts contingent on an event not happening.

33. Contingent contracts to do or not to do anything, if an uncertain future event does not happen, can be enforced when the happening of that event becomes impossible, and not before.

Illustration.

A agrees to pay B a sum of money if a certain ship does not return. This ship is sunk. The contract can be enforced when the ship sinks.

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* Compare 8 and 9 Vic., c. 109, s. 18.

Act IX. of 1872.

When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person.

34. If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.

Illustration.

A agrees to pay B a sum of money if B marries C.

C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die, and that C may afterwards marry B.

When contracts become void, which are contingent on happening of specified event within fixed time.

35. Contingent contracts to do or not to do anything, if a specified uncertain event happens within a fixed time, become void, if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

When contracts may be enforced which are contingent on specified event not happening within fixed time.

Contingent contracts to do or not to do anything, if a specified uncertain event does not happen within a fixed time, may be enforced by law when the time fixed has expired, and such event has not happened, or, before the time fixed has expired, if it becomes certain that such event will not happen.

Illustrations.

(*a.*) A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year, and becomes void if the ship is burnt within the year.

(*b.*) A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

Agreements contingent on impossible events void.

36. Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

Illustrations.

(*a.*) A agrees to pay B 1,000 rupees if two straight lines should enclose a space. The agreement is void.

(*b.*) A agrees to pay B 1,000 rupees if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void.

CHAPTER IV.—OF THE PERFORMANCE OF CONTRACTS.

Contracts which must be performed.

Obligation of parties to contracts.

37. The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Promises bind the representatives of the promisors in case of the death of such promisors before performance,* unless a contrary intention appears from the contract.

* This probably means "to the extent of the assets received by them as such, and not duly applied."—See *Madho Dass* v. *Radha Mal*, 9 Punjab Record 213.

Illustrations.

(*a*) A promises to deliver goods to B on a certain day on payment of Rs. 1,000, A dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay the Rs. 1,000 to A's representatives.

(*b*.) A promises to paint a picture for B by a certain day at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B.

38. Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

Effect of refusal to accept offer of performance.

Every such offer must fulfil the following conditions :—

(1.) It must be unconditional.

(2.) It must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do.

(3.) If the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

Illustration.

A contracts to deliver to B at his warehouse, on the 1st March 1873, 100 bales of cotton of a particular quality. In order to make an offer of performance with the effect stated in this section, A must bring the cotton to B's warehouse, on the appointed day, under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.

39. When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract,* unless he has signified, by words or conduct, his acquiescence in its continuance.

Effect of refusal of party to perform promise wholly.

Illustrations.

(*a*.) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night A wilfully absents herself from the theatre. B is at liberty to put an end to the contract.

(*b*.) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her at the rate of 100 rupees for each night. On the sixth night A wilfully absents herself. With the assent of B, A sings on the seventh night. B has signified his acquiescence in the continuance of the contract, and cannot now put an end to it, but is entitled to compensation for the damage sustained by him through A's failure to sing on the sixth night.

By whom contracts must be performed.

40. If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

Person by whom promise is to be performnd.

* And see s. 75, *infra*.

Act IX. of 1872.

Illustrations.

(*a.*) A promises to pay B a sum of money. A may perform this promise, either by personally paying the money to B, or by causing it to be paid to B by another; and, if A dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

(*b.*) A promises to paint a picture for B. A must perform this promise personally.

41. When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

Effect of accepting performance from third person.

42. When two or more persons have made a joint promise, then (unless a contrary intention appears by the contract) all such persons, during their joint lives, and, after the death of any of them, his representative jointly with the survivor or survivors, and, after the death of the last survivor, the representatives of all jointly, must fulfil the promise.

Devolution of joint liabilities.

43. When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one "or more"* of such joint promisors to perform the whole of the promise.

Any one of joint promisors may be compelled to perform.

Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

Each promisor may compel contribution.

If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

Sharing of loss by default in contribution.

Explanation.—Nothing in this section shall prevent a surety from recovering from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

Illustrations.

(*a.*) A, B, and C, jointly promise to pay D 3,000 rupees. D may compel either A or B or C to pay him 3,000 rupees.

(*b.*) A, B, and C, jointly promise to pay D the sum of 3,000 rupees, C is compelled to pay the whole. A is insolvent, but his assets are sufficient to pay one-half of his debts. C is entitled to receive 500 rupees from A's estate, and 1,250 rupees from B.

(*c.*) A, B, and C, are under a joint promise to pay D 3,000 rupees. C is unable to pay anything, and A is compelled to pay the whole. A is entitled to receive 1,500 rupees from B.

(*d.*) A, B, and C, are under a joint promise to pay D 3,000 rupees, A and B being only sureties for C. C fails to pay. A and B are compelled to pay the whole sum. They are entitled to recover it from C.

44. Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors; neither does it free the joint promisor so released from responsibility to the other joint promisor or joint promisors.†

Effect of release of one joint promisor.

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* The words "or more" have been inserted by Act XII. of 1891.

† See s. 138, *infra*.

Devolution of joint rights.

45. When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly.*

Illustration.

A, in consideration of 5,000 rupees lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's representatives jointly with C during C's life, and, after the death of C, with the representatives of B and C jointly.

Time and Place for Performance.

Time for performance of promise, where no application is to be made and no time is specified.

46. Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

Explanation.—The question, 'What is a reasonable time?' is, in each particular case, a question of fact.

Time and place for performance of promise on certain day and no application to be made.

47. When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

Illustration.

A promises to deliver goods at B's warehouse on the 1st January. On that day A brings the goods to B's warehouse, but after the usual hour for closing it, and they are not received. A has not performed his promise.

Application for performance on certain day to be at proper time and place.

48. When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business.

Explanation.—The question, 'What is a proper time and place?' is, in each particular case, a question of fact.

Place for performance of promise where no application to be made, and no place fixed for performance.

49. When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place.

Illustration.

A undertakes to deliver a thousand maunds of jute to B on a fixed day. A must apply to B to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place.

Performance in manner or at time prescribed or sanctioned by promisee.

50. The performance of any promise may be made in any manner or at any time which the promisee prescribes or sanctions.

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* But see, as to Government Securities, Act XIII. of 1886, s. 5.

Illustrations.

(*a*.) B owes A 2,000 rupees. A desires B to pay the amount to A's account with C, a banker. B, who also banks with C, orders the amount to be transferred from his account to A's credit, and this is done by C. Afterwards, and before A knows of the transfer, C fails. There has been a good payment by B.

(*b*.) A and B are mutually indebted. A and B settle an account by setting off one item against another, and B pays A the balance found to be due from him upon such settlement. This amounts to a payment by A and B, respectively, of the sums which they owed to each other.

(*c*.) A owes B 2,000 rupees. B accepts some of A's goods in reduction of the debt. The delivery of the goods operates as a part-payment.

(*d*.) A desires B, who owes him Rs. 100, to send him a note for Rs. 100 by post. The debt is discharged as soon as B puts into the post a letter containing the note duly addressed to A.

Performance of Reciprocal Promises.

Promisor not bound to perform, unless reciprocal promisee ready and willing to perform.

51. When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

Illustrations.

(*a*.) A and B contract that A shall deliver goods to B to be paid for by B on delivery.

A need not deliver the goods unless B is ready and willing to pay for the goods on delivery.

B need not pay for the goods unless A is ready and willing to deliver them on payment.

(*b*.) A and B contract that A shall deliver goods to B at a price to be paid by instalments, the first instalment to be paid on delivery.

A need not deliver, unless B is ready and willing to pay the first instalment on delivery.

B need not pay the first instalment, unless A is ready and willing to deliver the goods on payment of the first instalment.

Order of performance of reciprocal promises.

52. Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order; and where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

Illustrations.

(*a*.) A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B's promise to pay for it.

(*b*.) A and B contract that A shall make over his stock-in-trade to B at a fixed price, and B promises to give security for the payment of the money. A's promise need not be performed until the security is given, for the nature of the transaction requires that A should have security before he delivers up his stock.

Liability of party preventing event on which contract is to take effect.

53. When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation* from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

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* See s. 73, *infra*.

Illustration.

A and B contract that B shall execute certain work for A for a thousand rupees. B is ready and willing to execute the work accordingly, but A prevents him from doing so. The contract is voidable at the option of B; and, if he elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non-performance.

54 When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed, till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises.

Illustrations.

(*a.*) A hires B's ship to take in and convey from Calcutta to the Mauritius a cargo to be provided by A, B receiving a certain freight for its conveyance. A does not provide any cargo for the ship. A cannot claim the performance of B's promise, and must make compensation to B for the loss which B sustains by the non-performance of the contract.

(*b.*) A contracts with B to execute certain builder's work for a fixed price, B supplying the scaffolding and timber necessary for the work. B refuses to furnish any scaffolding or timber, and the work cannot be executed. A need not execute the work, and B is bound to make compensation to A for any loss caused to him by the non-performance of the contract.

(*c.*) A contracts with B to deliver to him, at a specified price, certain merchandise on board a ship which cannot arrive for a month, and B engages to pay for the merchandise within a week from the date of the contract. B does not pay within the week A's promise to deliver need not be performed, and B must make compensation.

(*d.*) A promises B to sell him one hundred bales of merchandise, to be delivered next day, and B promises A to pay for them within a month. A does not deliver according to his promise. B's promise to pay need not be performed, and A must make compensation.

55. When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable, at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

Effect of failure to perform at fixed time, on contract in which time is essential.

If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

Effect of such failure when time is not essential.

If in case of a contract, voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless at the time of such acceptance he gives notice to the promisor of his intention to do so.*

Effect of acceptance of performance at time other than that agreed upon.

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* Compare ss. 62 and 63, *infra*.

Act IX. of 1872.

Agreement to do impossible act.

56. An agreement to do an act impossible in itself is void.

A contract to do an act which, after the contract is made, becomes impossible,* or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.†

Contract to do act afterwards becoming impossible or unlawful.

Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

Compensation for loss through non-performance of act known to be impossible or unlawful.

Illustrations.

(*a.*) A agrees with B to discover treasure by magic. The agreement is void.

(*b.*) A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.

(*c.*) A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practise polygamy. A must make compensation to B for the loss caused to her by the non-performance of his promise.

(*d.*) A contracts to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared.

(*e.*) A contracts to act at a theatre for six months in consideration of a sum paid in advance by B. On several occasions A is too ill to act. The contract to act on those occasions becomes void.

57. Where persons reciprocally promise, firstly, to do certain things which are legal, and, secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract; but the second is a void agreement.

Reciprocal promises to do things legal, and also other things illegal.

Illustration.

A and B agree that A shall sell B a house for 10,000 rupees, but that, if B uses it as a gambling house, he shall pay A 50,000 rupees for it.

The first set of reciprocal promises, namely, to sell the house, and to pay 10,000 rupees for it, is a contract.

The second set is for an unlawful object, namely, that B may use the house as a gambling house, and is a void agreement.

58. In the case of an alternative promise, one branch of which is legal, and the other illegal, the legal branch alone can be enforced.

Alternative promise, one branch being illegal.

Illustration.

A and B agree that A shall pay B 1,000 rupees, for which B shall afterwards deliver to A either rice or smuggled opium.

This is a valid contract to deliver rice, and a void agreement as to the opium.

Appropriation of Payments.

59. Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

Application of payment where debt to be discharged is indicated.

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* Otherwise than by the default of the contractor.

† But see s. 65, *infra*. And see Act I. of 1877, s. 13.

Illustrations.

(*a*) A owes B, among other debts, 1,000 rupees upon a promissory note, which falls due on the 1st June. He owes B no other debt of that amount. On the 1st June A pays to B 1,000 rupees. The payment is to be applied to the discharge of the promissory note.

(*b*.) A owes B, among other debts, the sum of 567 rupees. B writes to A, and demands payment of this sum. A sends to B 567 rupees. This payment is to be applied to the discharge of the debt of which B had demanded payment.

Application of payment where debt to be discharged is not indicated.

60. Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

Application of payment where neither party appropriates.

61. Where neither party makes any appropriation, the payment shall be applied in discharge of the debts* in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably.

Contracts which need not be performed.

Effect of novation, rescission, and alteration of contract.

62. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

Illustrations.

(*a*.) A owes money to B under a contract. It is agreed, between A, B, and C, that B shall thenceforth accept C as his debtor instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.

(*b*.) A owes B 10,000 rupees. A enters into an arrangement with B, and gives B a mortgage of his (A's) estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract, and extinguishes the old.

(*c*.) A owes B 1,000 rupees under a contract. B owes C 1,000 rupees. B orders A to credit C with 1,000 rupees in his books, but C does not assent to the arrangement. B still owes C 1,000 rupees, and no new contract has been entered into.

Promisee may dispense with or remit performance of promise.

63. Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance,† or may accept, instead of it, any satisfaction which he thinks fit.

Illustrations.

(*a*.) A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

(*b*.) A owes B 5,000 rupees. A pays to B, and B accepts, in satisfaction of the whole debt, 2,000 rupees paid at the time and place at which the 5,000 rupees were payable. The whole debt is discharged.

(*c*.) A owes B 5,000 rupees. C pays to B 1,000 rupees, and B accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim.‡

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* Probably the lawful debts referred to in s. 60.

† But see s. 135, *infra*.

‡ See s. 41, *supra*.

Act IX. of 1872.

(*d.*) A owes B, under a contract, a sum of money, the amount of which has not been ascertained. A, without ascertaining the amount, gives to B, and B, in satisfaction thereof, accepts, the sum of 2,000 rupees. This is a discharge of the *whole* debt, whatever may be its amount.

(*e.*) A owes B 2,000 rupees, and is also indebted to other creditors. A makes an arrangement with his creditors, including B, to pay them a composition* of eight annas in the rupee upon their respective demands. Payment to B of 1,000 rupees is a discharge of B's demand.

64. When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall, if he have received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received. †

Consequences of rescission of voidable contract.

65. When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.

Obligation of person who has received advantage under void agreement, or contract that becomes void.

Illustrations.

(*a.*) A pays B 1,000 rupees, in consideration of B's promising to marry C, A's daughter. C is dead at the time of the promise. The agreement is void, but B must repay A the 1,000 rupees.

(*b.*) A contracts with B to deliver to him 250 maunds of rice before the first of May A delivers 130 maunds only before that day, and none after. B retains the 130 maunds after the 1st of May. He is bound to pay A for them.

(*c.*) A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her a hundred rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B must pay A for the five nights on which she had sung.

(*d.*) A contracts to sing for B at a concert for 1,000 rupees which are paid in advance. A is too ill to sing. A is not bound to make compensation to B for the loss of the profits which B would have made if A had been able to sing, but must refund to B the 1,000 rupees paid in advance.

66. The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules as apply to the communication or revocation of a proposal. ‡

Mode of communicating or revoking rescission of voidable contract.

67. If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

Effect of neglect of promisee to afford promisor reasonable facilities for performance.

Illustration.

A contracts with B to repair B's house.

B neglects or refuses to point out to A the places in which his house requires repair.

A is excused for the non-performance of the contract, if it is caused by such neglect or refusal.

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* Substituted for "compensation" by Act XII. of 1891.

† See s. 75, *infra*.

‡ See ss. 3 and 5, *supra*.

CHAPTER V.—OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACT.

Claim for necessaries supplied to person incapable of contracting or on his account.

68. If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Illustrations.

(*a*.) A supplies B, a lunatic, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property.

(*b*.) A supplies the wife and children of B, a lunatic, with necessaries suitable to their condition in life. A is entitled to be reimbursed from B's property.

Reimbursement of person paying money due by another, in payment of which he is interested.

69. A person, who is interested in the payment of money which another is bound by law to pay and who therefore pays it, is entitled to be reimbursed by the other.

Illustration.

B holds land in Bengal, on a lease granted by A, the zamindar. The revenue payable by A to the Government being in arrear, his land is advertized for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of B's lease. B, to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from A. A is bound to make good to B the amount so paid.

Obligation of person enjoying benefit of non-gratuitous act.

70. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.*

Illustrations.

(*a*.) A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

(*b*.) A saves B's property from fire. A is not entitled to compensation from B if the circumstances show that he intended to act gratuitously.

Responsibility of finder of goods.

71. A person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee. †

Liability of person to whom money is paid, or thing delivered, by mistake or under coercion.

72. A person to whom money has been paid, or any thing delivered, by mistake or under coercion,‡ must repay or return it.

Illustrations.

(*a*.) A and B jointly owe 100 rupees to C. A alone pays the amount to C, and B, not knowing this fact, pays 100 rupees over again to C. C is bound to repay the amount to B.

(*b*.) A railway company refuses to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

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* As to suits by minors under this section in Presidency Small Cause Courts, see Act XV. of 1882, s. 32.

† See ss. 151 and 152, *infra*.

‡ For definition of coercion, see s. 15, *supra*.

Act IX. of 1872.

CHAPTER VI.—OF THE CONSEQUENCES OF BREACH OF CONTRACT.

Compensation for loss or damage caused by breach of contract.

73. When a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract.

When an obligation resembling those created by contract has been incurred, and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default as if such person had contracted to discharge it, and had broken his contract.

Explanation.—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

Illustrations.

(*a.*) A contracts to sell and deliver 50 maunds of saltpetre to B at a certain price, to be paid on delivery. A breaks his promise. B is entitled to receive from A, by way of compensation, the sum, if any, by which the contract-price falls short of the price for which B might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

(*b.*) A hires B's ship to go to Bombay, and there take on board, on the first of January, a cargo which A is to provide, and to bring it to Calcutta, the freight to be paid when earned. B's ship does not go to Bombay, but A has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of such trouble and expense.

(*c.*) A contracts to buy of B, at a stated price, 50 maunds of rice, no time being fixed for delivery. A afterwards informs B that he will not accept the rice if tendered to him. B is entitled to receive from A, by way of compensation, the amount, if any, by which the contract-price exceeds that which B can obtain for the rice at the time when A informs B that he will not accept it.

(*d*) A contracts to buy B's ship for 60,000 rupees, but breaks his promise. A must pay to B, by way of compensation, the excess, if any, of the contract-price over the price which B can obtain for the ship at the time of the breach of promise.

(*e.*) A, the owner of a boat, contracts with B to take a cargo of jute to Mirzapur for sale at that place, starting on a specified day. The boat, owing to some avoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Mirzapur is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapur at the time when it would have arrived if forwarded in due course, and its market-price at the time when it actually arrived.

(*f.*) A contracts to repair B's house in a certain manner, and receives payment in advance. A repairs the house, but not according to contract. B is entitled to recover from A the cost of making the repairs conform to the contract.

(*g.*) A contracts to let his ship to B for a year, from the first of January, for a certain price. Freights rise, and, on the first of January, the hire obtainable for the ship is higher than the contract-price. A breaks his promise. He must pay to B, by way of compensation, a sum equal to the difference between the contract-price and the price for which B could hire a similar ship for a year on and from the first of January.

(*h.*) A contracts to supply B with a certain quantity of iron at a fixed price, being a higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron. B must pay to A, by way of compensation, the difference between the contract-price of the iron and the sum for which A could have obtained and delivered it.

(*i.*) A delivers to B, a common carrier, a machine, to be conveyed without delay, to A's mill, informing B that his mill is stopped for want of the machine. B unreasonably delays the delivery of the machine, and A, in consequence, loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation, the average amount of profit which would have been made by the working of the mill during the time that delivery of it was delayed, but not the loss sustained through the loss of the Government contract.

(*j.*) A, having contracted with B to supply B with 1,000 tons of iron at 100 rupees a ton, to be delivered at a stated time, contracts with C for the purchase of 1,000 tons of iron at 80 rupees a ton, telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A, who cannot procure other iron, and B, in consequence, rescinds the contract. C must pay to A 20,000 rupees, being the profit which A would have made by the performance of his contract with B.

(*k.*) A contracts with B to make and deliver to B, by a fixed day, for a specified price, a certain piece of machinery. A does not deliver the piece of machinery at the time specified, and, in consequence of this, B is obliged to procure another at a higher price than that which he was to have paid to A, and is prevented from performing a contract which B had made with a third person at the time of his contract with A (but which had not been then communicated to A), and is compelled to make compensation for breach of that contract. A must pay to B, by way of compensation, the difference between the contract-price of the piece of machinery and the sum paid by B for another, but not the sum paid by B to the third person by way of compensation.

(*l.*) A, a builder, contracts to erect and finish a house by the first of January in order that B may give possession of it at that time to C, to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that, before the first of January, it falls down, and has to be rebuilt by B, who, in consequence loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. A must make compensation to B for the cost of rebuilding the house, for the rent lost, and for the compensation made to C.

(*m.*) A sells certain merchandise to B, warranting it to be of a particular quality, and B, in reliance upon this warranty, sells it to C with a similar warranty. The goods prove to be not according to the warranty, and B becomes liable to pay C a sum of money by way of compensation. B is entitled to be reimbursed this sum by A.

(*n.*) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day. B, in consequence of not receiving the money on that day, is unable to pay his debts, and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay, together with interest up to the day of payment.

(*o.*) A contracts to deliver 50 maunds of saltpetre to B on the first of January at a certain price. B, afterwards, before the first of January, contracts to sell the saltpetre to C at a price higher than the market-price of the first of January. A breaks his promise. In estimating the compensation payable by A to B, the market-price of the first of January, and not the profit which would have arisen to B from the sale to C, is to be taken into account.

(*p.*) A contracts to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting his business. A breaks his promise, and B, having no cotton, is obliged to close his mill. A is not responsible to B for the loss caused to B by the closing of the mill.

(*q.*) A contracts to sell and deliver to B, on the first of January, certain cloth which B intends to manufacture into caps of a particular kind, for which there is no demand, except at that season. The cloth is not delivered till after the appointed

Act IX. of 1872.

time, and too late to be used that year in making caps. B is entitled to receive from A, by way of compensation, the difference between the contract-price of the cloth and its market-price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.

(*r*.) A, a ship-owner, contracts with B to convey him from Calcutta to Sydney in A's ship sailing on the first of January, and B pays to A, by way of deposit, one half of his passage-money. The ship does not sail on the first of January, and B, after being, in consequence, detained in Calcutta for some time, and thereby put to some expense, proceeds to Sydney in another vessel, and in consequence, arriving too late in Sydney, loses a sum of money. A is liable to repay to B his deposit, with interest, and the expense to which he is put by his detention in Calcutta, and the excess, if any, of the passage-money paid for the second ship over that agreed upon for the first, but not the sum of money which B lost by arriving in Sydney too late.

Title to compensation for breach of contract in which a sum is named as payable in case of breach.

74. When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named.

Exception.—When any person enters into any bail-bond, recognizance, or other instrument of the same nature, or, under the provisions of any law or under the orders of the Government of India or of any Local Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation.—A person who enters into a contract with Government does not necessarily thereby undertake any public duty or promise to do an act in which the public are interested.

Illustrations.

(*a*.) A contracts with B to pay B Rs. 1,000 if he fails to pay B Rs. 500 on a given day. A fails to pay B Rs. 500 on that day. B is entitled to recover from A such compensation, not exceeding Rs. 1,000, as the Court considers reasonable.

(*b*.) A contracts with B that, if A practises as a surgeon within Calcutta, he will pay B Rs. 5,000. A practises as a surgeon in Calcutta. B is entitled to such compensation, not exceeding Rs. 5,000, as the Court considers reasonable.

(*c*.) A gives a recognizance binding him in a penalty of Rs. 500 to appear in Court on a certain day. He forfeits his recognizance. He is liable to pay the whole penalty.

Party rightfully rescinding contract entitled to compensation.

75. A person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract.

Illustration.

A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract.

CHAPTER VII.—SALE OF GOODS.

When property in goods sold passes.

'Goods' defined.

76. In this chapter, the word 'goods' means and includes every kind of moveable property.*

'Sale' defined.

77. 'Sale' is the exchange of property for a price. It involves the transfer of the ownership of the thing sold from the seller to the buyer.

Sale how effected.

78. Sale is effected by offer and acceptance of ascertained goods for a price,

or of a price for ascertained goods,

together with payment of the price or delivery of the goods; or with tender, part-payment, earnest, or part-delivery; or with an agreement, express or implied, that the payment or delivery, or both, shall be postponed.

Where there is a contract for the sale of ascertained goods, the property in the goods sold passes to the buyer when the whole or part of the price, or when the earnest, is paid, or when the whole or part of the goods is delivered.†

If the parties agree, expressly or by implication, that the payment or delivery, or both, shall be postponed, the property passes as soon as the proposal for sale is accepted.

Illustrations.

(*a*.) B offers to buy A's horse for 500 rupees. A accepts B's offer, and delivers the horse to B. The horse becomes B's property on delivery.

(*b*.) A sends goods to B, with the request that he will buy them at a stated price if he approves of them, or return them if he does not approve of them. B retains the goods, and informs A that he approves of them. The goods become B's when B retains them.

(*c*.) B offers A, for his horse, 1,000 rupees, the horse to be delivered to B on a stated day, and the price to be paid on another stated day. A accepts the offer. The horse becomes B's as soon as the proposal is accepted.

(*d*.) B offers A, for his horse, 1,000 rupees on a month's credit. A accepts the offer. The horse becomes B's as soon as the offer is accepted.

(*e*.) B, on the first January, offers to A, for a quantity of rice, 2,000 rupees, to be paid on the first March following, the rice not to be taken away till paid for. A accepts the offer. The rice becomes B's as soon as the offer is accepted.

Transfer of ownership of thing sold, which has yet to be ascertained, made, or finished.

79. Where there is a contract for the sale of a thing which has yet to be ascertained, made, or finished,‡ the ownership of the thing is not transferred to the buyer until it is ascertained, made, or finished.

Illustration.

B orders A, a barge-builder, to make him a barge. The price is not made payable by instalments. While the barge is building, B pays to A money from time to time on account of the price. The ownership of the barge does not pass to B until it is finished.

Completion of sale of goods, which the seller is to put into state in which buyer is to take them.

80. Where, by a contract for the sale of goods, the seller is to do anything to them for the purpose of putting them into a state in which the buyer is to take them, the sale is not complete until such thing has been done.

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* 'Goods' would thus include money and negotiable instruments.—See Act I. of 1868, s. 2, cl. 6. This cannot have been intended.

† *I.e.*, when the whole is delivered, or when part is delivered in progress of delivery of the whole. See s. 92, *infra*.

‡ See s. 80.

Act IX. of 1872.

Illustration.

A, a ship-builder, contracts to sell to B for a stated price a vessel which is lying in A's yard; the vessel to be rigged and fitted for a voyage, and the price to be paid on delivery. Under the contract, the property in the vessel does not pass to B until the vessel has been rigged, fitted up, and delivered.

Completion of sale of goods when seller has to do anything thereto in order to ascertain price.

81. Where anything remains to be done to the goods by the seller for the purpose of ascertaining the amount of the price, the sale is not complete until this has been done.

Illustrations.

(*a.*) A, the owner of a stack of bark, contracts to sell it to B, weigh and deliver it, at 100 rupees per ton. B agrees to take and pay for it on a certain day. Part is weighed and delivered to B; the ownership of the residue is not transferred to B until it has been weighed pursuant to the contract.

(*b.*) A contracts to sell a heap of clay to B at a certain price per ton. B is, by the contract, to load the clay in his own carts, and to weigh each load at a certain weighing machine, which his carts must pass on their way from A's grounds to B's place of deposit. Here, nothing more remains to be done by the seller; the sale is complete, and the ownership of the heap of clay is transferred at once.

Completion of sale, when goods are unascertained at date of contract.

82. Where the goods are not ascertained at the time of making the contract of sale, it is necessary to the completion of the sale that the goods shall be ascertained.*

Illustration.

A agrees to sell to B 20 tons of oil in A's cisterns. A's cisterns contain more than 20 tons of oil. No portion of the oil has become the property of B.

Ascertainment of goods by subsequent appropriation.

83. Where the goods are not ascertained at the time of making the agreement for sale, but goods answering the description in the agreement are subsequently appropriated by one party for the purpose of the agreement, and that appropriation is assented to by the other, the goods have been ascertained, and the sale is complete.

Illustration.

A, having a quantity of sugar in bulk more than sufficient to fill 20 hogsheads, contracts to sell B 20 hogsheads of it. After the contract, A fills 20 hogsheads with the sugar, and gives notice to B that the hogsheads are ready, and requires him to take them away. B says he will take them as soon as he can. By this appropriation by A, and assent by B, the sugar becomes the property of B.

Ascertainment of goods by seller's selection.

84. Where the goods are not ascertained at the time of making the contract of sale, and, by the terms of the contract, the seller is to do an act with reference to the goods which cannot be done until they are appropriated to the buyer, the seller has a right to select any goods answering to the contract, and, by his doing so, the goods are ascertained.

Illustration.

B agrees with A to purchase of him, at a stated price, to be paid on a fixed day, 50 maunds of rice out of a larger quantity in A's granary. It is agreed that B shall send sacks for the rice, and that A shall put the rice into them. B does so, and A puts 50 maunds of rice into the sacks. The goods have been ascertained.

Transfer of ownership of moveable property, when sold together with immoveable.

85. Where an agreement is made for the sale of immoveable and moveable property combined, the ownership of the moveable property does not pass before the transfer of the immoveable property.

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* See s. 79.

Illustration.

A agrees with B for the sale of a house and furniture. The ownership of the furniture does not pass to B until the house is conveyed to B.

Buyer to bear loss after goods have become his property.

86. When goods have become the property of the buyer, he must bear any loss arising from their destruction or injury.

Illustrations.

(*a.*) B offers, and A accepts, 100 rupees for a stack of fire-wood standing on A's premises, the firewood to be allowed to remain on A's premises till a certain day, and not to be taken away till paid for. Before payment, and while the fire-wood is on A's premises, it is accidentally destroyed by fire. B must bear the loss.

(*b.*) A bids 1,000 rupees for a picture at a sale by auction. After the bid, it is injured by an accident. If the accident happens before the hammer falls, the loss falls on the seller; if afterwards, on A.

87. When there is a contract for the sale of goods not yet in existence, the ownership of the goods may be transferred by acts done, after the goods are produced in pursuance of the contract by the seller, or by the buyer with the seller's assent.

Transfer of ownership of goods agreed to be sold while non-existent.

Illustrations.

(*a.*) A contracts to sell to B, for a stated price, all the indigo which shall be produced at A's factory during the ensuing year. A, when the indigo has been manufactured, gives B an acknowledgment that he holds the indigo at his disposal. The ownership of the indigo vests in B from the date of the acknowledgment.

(*b.*) A, for a stated price, contracts that B may take and sell any crops that shall be grown on A's land in succession to the crops then standing. Under this contract, B, with the assent of A, takes possession of some crops grown in succession to the crops standing at the time of the contract. The ownership of the crops, when taken possession of, vests in B.

(*c.*) A, for a stated price, contracts that B may take and sell any crops that shall be grown on his land in succession to the crops then standing. Under this contract, B applies to A for possession of some crops grown in succession to the crops which were standing at the time of the contract. A refuses to give possession. The ownership of the crops has not passed to B, though A may commit a breach of contract in refusing to give possession.

88. A contract for the sale of goods to be delivered at a future day is binding, though the goods are not in the possession of the seller at the time of making the contract, and though, at that time, he has no reasonable expectation of acquiring them otherwise than by purchase.

Contract to sell and deliver at a future day goods not in seller's possession at date of contract.

Illustration.

A contracts, on the first January, to sell B 50 shares in the East Indian Railway Company, to be delivered and paid for on the first March of the same year. A, at the time of making the contract, is not in possession of any shares. The contract is valid.

89. Where the price of goods sold is not fixed by the contract of sale, the buyer is bound to pay the seller such a price as the Court considers reasonable.

Determination of price not fixed by contract.

Illustration.

B, living in Patna, orders of A, a coach-builder at Calcutta, a carriage of a particular description. Nothing is said by either as to the price. The order having been executed, and the price being in dispute between the buyer and the seller, the Court must decide what price it considers reasonable.

Act IX. of 1872.

Delivery.

90. Delivery of goods sold may be made by doing anything which has the effect of putting them in the possession of the buyer, or of any person authorized to hold them on his behalf.

Delivery how made.

Illustrations.

(*a.*) A sells to B a horse, and causes or permits it to be removed from A's stables to B's. The removal to B's stable is a delivery.

(*b.*) B in England orders 100 bales of cotton from A, a merchant of Bombay, and sends his own ship to Bombay for the cotton. The putting the cotton on board the ship is a delivery to B.

(*c.*) A sells to B certain specific goods which are locked up in a godown. A gives B the key of the godown in order that he may get the goods. This is a delivery.

(*d.*) A sells to B five specific casks of oil. The oil is in the warehouse of A. B sells the five casks to C. A receives warehouse-rent for them from C. This amounts to a delivery of the oil to C, as it shows an assent on the part of A to hold the goods as warehouseman of C.

(*e.*) A sells to B 50 maunds of rice in the possession of C, a warehouseman. A gives B an order to C to transfer the rice to B, and C assents to such order, and transfers the rice in his books to B. This is a delivery.

(*f.*) A agrees to sell B five tons of oil, at 1,000 rupees per ton, to be paid for at the time of delivery. A gives to C, a wharfinger, at whose wharf he had twenty tons of the oil, an order to transfer five of them into the name of B. C makes the transfer in his books, and gives A's clerk a notice of the transfer for B. A's clerk takes the transfer notice to B, and offers to give it to him on payment of the price of the oil. B refuses to pay. There has been no delivery to B, as B never assented to make C his agent to hold for him the five tons selected by A.

91. A delivery to a wharfinger or carrier of the goods sold has the same effect as a delivery to the buyer, but does not render the buyer liable for the price of goods which do not reach him, unless the delivery is so made as to enable him to hold the wharfinger or carrier responsible for the safe custody or delivery of the goods.

Effect of delivery to wharfinger or carrier.

Illustration.

B, at Agra, orders of A, who lives at Calcutta, three casks of oil to be sent to him by railway. A takes three casks of oil directed to B to the railway station, and leaves them there without conforming to the rules which must be complied with in order to render the Railway Company responsible for their safety. The goods do not reach B. There has not been a sufficient delivery to charge B in a suit for the price.

92. A delivery of part of goods, in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

Effect of part-delivery.

Illustrations.

(*a.*) A ship arrives in a harbour laden with a cargo consigned to A, the buyer of the cargo. The captain begins to discharge it, and delivers over part of the goods to A in progress of the delivery of the whole. This is a delivery of the cargo to A for the purpose of passing the property in the cargo.

(*b.*) A sells to B a stack of fire-wood, to be paid for by B on delivery. After the sale, B applies for and obtains from A leave to take away some of the fire-wood. This has not the legal effect of delivery of the whole.

(*c.*) A sells 50 maunds of rice to B. The rice remains in A's warehouse. After the sale, B sells to C 10 maunds of the rice, and A, at B's desire, sends the 10 maunds to C. This has not the legal effect of a delivery of the whole.

Seller not bound to deliver until buyer applies for delivery.

93. In the absence of any special promise, the seller of goods is not bound to deliver them until the buyer applies for delivery.*

Place of delivery.

94. In the absence of any special promise as to delivery, goods sold are to be delivered at the place at which they are at the time of the sale; and goods contracted to be sold are to be delivered at the place at which they are at the time of the contract for sale, or, if not then in existence, at the place at which they are produced.

Seller's Lien.

Seller's lien.

95. Unless a contrary intention appears by the contract, a seller has a lien† on sold goods as long as they remain in his possession, and the price or any part of it remains unpaid.‡

Lien where payment to be made at a future day, but no time fixed for delivery.

96. Where, by the contract, the payment is to be made at a future day, but no time is fixed for the delivery of the goods, the seller has no lien, and the buyer is entitled to a present delivery of the goods, without payment. But, if the buyer becomes insolvent before delivery of the goods, or if the time appointed for payment arrives before the delivery of the goods, the seller may retain the goods for the price.

'Insolvency' defined.

Explanation.—A person is insolvent who has ceased to pay his debts in the usual course of business, or who is incapable of paying them.

Illustration.

A sells to B a quantity of sugar in A's warehouse. It is agreed that three months' credit shall be given. B allows the sugar to remain in A's warehouse. Before the expiry of the three months, B becomes insolvent. A may retain the goods for the price.

Seller's lien where payment to be made at future day, and buyer allows goods to remain in seller's possession.

97. Where, by the contract, the payment is to be made at a future day, and the buyer allows the goods to remain in the possession of the seller until that day, and does not then pay for them, the seller may retain the goods for the price.

Illustration.

A sells to B a quantity of sugar in A's warehouse. It is agreed that three months' credit shall be given. B allows the sugar to remain in A's warehouse till the expiry of the three months, and then does not pay for them. A may retain the goods for the price.

Seller's lien against subsequent buyer.

98 A seller, in possession of goods sold, may retain them for the price against any subsequent buyer, unless the seller has recognized the title of the subsequent buyer.

Stoppage in Transit.

Power of seller to stop in transit.

99. A seller who has parted with the possession of the goods, and has not received the whole price, may, if the buyer becomes insolvent, stop the goods while they are in transit to the buyer.

When goods are to be deemed in transit.

100. Goods are to be deemed in transit while they are in the possession of the carrier, or lodged at any place in the course of transmission to the buyer, and are not yet come into

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* See s. 46, *supra*. † For the amount of the purchase-money. ‡ Or untendered.

Act IX. of 1872.

the possession of the buyer or any person on his behalf, otherwise than as being in possession of the carrier, or as being so lodged.

Illustrations.

(*a.*) B, living at Madras, orders goods of A at Patna, and directs that they shall be sent to Madras. The goods are sent to Calcutta, and there delivered to C, a wharfinger, to be forwarded to Madras. The goods, while they are in the possession of C, are in transit.

(*b.*) B, at Delhi, orders goods of A at Calcutta. A consigns and forwards the goods to B at Delhi. On arrival there, they are taken to the warehouse of B, and left there. B refuses to receive them, and immediately afterwards stops payment. The goods are in transit.

(*c.*) B, who lives at Puna, orders goods of A at Bombay. A sends them to Puna by C, a carrier appointed by B. The goods arrive at Puna, and are placed by C, at B's request, in C's warehouse for B. The goods are no longer in transit.

(*d.*) B, a merchant of London, orders 100 bales of cotton of A, a merchant at Bombay. B sends his own ship to Bombay for the cotton. The transit is at an end when the cotton is delivered on board the ship.

(*e.*) B, a merchant of London, orders 100 bales of cotton of A, a merchant at Bombay. B sends his own ship to Bombay for the cotton. A delivers the cotton on board the ship, and takes bills of lading from the master, making the cotton deliverable to A's order or assigns. The cotton arrives at London, but, before coming into B's possession, B becomes insolvent. The cotton has not been paid for. A may stop the cotton.

Continuance of right of stoppage.

101. The seller's right of stoppage does not, except in the cases hereinafter mentioned, cease on the buyer's re-selling the goods while in transit, and receiving the price, but continues until the goods have been delivered to the second buyer, or to some person on his behalf.

Cessation of right on assignment, by buyer, of bill of lading.

102. The right of stoppage ceases if the buyer, having obtained a bill of lading or other document showing title to the goods,* assigns it, while the goods are in transit, to a second buyer, who is acting in good faith, and who gives valuable consideration for them.

Illustrations.

(*a.*) A sells and consigns certain goods to B, and sends him the bill of lading. A being still unpaid, B becomes insolvent, and, while the goods are in transit, assigns the bill of lading for cash to C, who is not aware of his insolvency. A cannot stop the goods in transit.

(*b.*) A sells and consigns certain goods to B. A being still unpaid, B becomes insolvent, and, while the goods are still in transit, assigns the bill of lading for cash to C, who knows that B is insolvent. The assignment not being in good faith, A may stil, stop the goods in transit.

Stoppage where bill of lading is pledged to secure specific advance.

103. Where a bill of lading or other instrument of title to any goods is assigned by the buyer of such goods by way of pledge, to secure an advance made specifically upon it, in good faith, the seller cannot, except on payment or tender to the pledgee of the advance so made, stop the goods in transit.

Illustrations.

(*a.*) A sells and consigns goods to B of the value of 12,000 rupees. B assigns the bill of lading for these goods to C, to secure a specific advance of 5,000 rupees made to him upon the bill of lading by C. B becomes insolvent, being indebted to C to the amount of 9,000 rupees. A is not entitled to stop the goods except on payment or tender to C of 5,000 rupees.

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* See s. 108, excep. 1, *infra*.

(b.) A sells and consigns goods to B of the value of 12,000 rupees. B assigns the bill of lading for these goods to C, to secure the sum of 5,000 rupees due from him to C upon a general balance of account. B becomes insolvent. A is entitled to stop the goods in transit without payment or tender to C of the 5,000 rupees.

Stoppage how effected.

104. The seller may effect stoppage in transit, either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other depository in whose possession they are.

Notice of seller's claim.

105. Such notice may be given, either to the person who has the immediate possession of the goods, or to the principal whose servant has possession. In the latter case, the notice must be given at such a time, and under such circumstances, that the principal, by the exercise of reasonable diligence, may communicate it to his servant in time to prevent a delivery to the buyer.

Right of seller on stoppage.

106. Stoppage in transit entitles the seller to hold the goods stopped until the price of the whole of the goods sold is paid.

Illustration.

A sells to B 100 bales of cotton; 60 bales having come into B's possession, and 40 being still in transit. B becomes insolvent, and A, being still unpaid, stops the 40 bales in transit. A is entitled to hold the 40 bales until the price of the 100 bales is paid.

Resale.

Resale on buyer's failure to perform.

107. Where the buyer of goods fails to perform his part of the contract, either by not taking the goods sold to him, or by not paying for them, the seller, having a lien on the goods, or having stopped them in transit, may, after giving notice to the buyer of his intention to do so, resell them after the lapse of a reasonable time, and the buyer must bear any loss, but is not entitled to any profit, which may occur on such resale.

Title.

Title conveyed by seller of goods to buyer.

108. No seller can give to the buyer of goods a better title to those goods than he has himself, except in the following cases:—

Exception 1.—When any person is, by the consent of the owner, in possession of any goods, or of any bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate, or warrant or order for delivery, or other document showing title to goods, he may transfer the ownership of the goods, of which he is so in possession, or to which such documents relate, to any other person, and give such person a good title thereto, notwithstanding any instructions of the owner to the contrary :* Provided that the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods or documents has no right to sell the goods.

Exception 2.—If one of several joint-owners of goods has the sole possession of them by the permission of the co-owners, the ownership of the goods is transferred to any person who buys them of such joint-owner in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods has no right to sell them.

* It has been held that this exception does not apply 'where there is only a qualified possession, such as a hirer of goods has, or where the possession is for a specific purpose.'—*Greenwood* v. *Holquette*, 12 B. L. R. 46.

Act IX. of 1872.

Exception 3.—When a person has obtained possession of goods under a contract voidable at the option of the other party thereto, the ownership of the goods is transferred to a third person, who, before the contract is rescinded, buys them in good faith of the person in possession; unless the circumstances which render the contract voidable amounted to an offence committed by the person in possession or those whom he represents.

In this case the original seller is entitled to compensation from the original purchaser for any loss which the seller may have sustained by being prevented from rescinding the contract.

Illustrations.

(*a.*) A buys from B, in good faith, a cow which B had stolen from C. The property in the cow is not transferred to A.

(*b.*) A, a merchant, entrusts B, his agent, with a bill of lading relating to certain goods, and instructs B not to sell the goods for less than a certain price, and not to give credit to D. B sells the goods to D for less than that price, and gives D three months' credit. The property in the goods passes to D.

(*c.*) A sells to B goods of which he has the bill of lading, but the bill of lading is made out for delivery of the goods to C, and it has been endorsed by C. The property is not transferred to B.

(*d.*) A, B, and C, are joint Hindu brothers, who own certain cattle in common. A is left by B and C in possession of a cow, which he sells to D. D purchases *bonâ fide*. The property in the cow is transferred to D.

(*e.*) A, by a misrepresentation not amounting to cheating, induces B to sell and deliver to him a horse. A sells the horse to C before B has rescinded the contract. The property in the horse is transferred to C; and B is entitled to compensation from A for any loss which B has sustained by being prevented from rescinding the contract.

(*f.*) A compels B by wrongful intimidation, or induces him by cheating or forgery, to sell him a horse, and before B rescinds the contract, sells the horse to C. The property is not transferred to C.

Warranty.

Seller's responsibility for badness of title.

109. If the buyer, or any person claiming under him, is, by reason of the invalidity of the seller's title, deprived of the thing sold, the seller is responsible to the buyer, or the person claiming under him, for loss caused thereby, unless a contrary intention appears by the contract.

Establishment of implied warranty of goodness or quality.

110. An implied warranty of goodness or quality may be established by the custom of any particular trade.

Warranty of soundness implied on sale of provisions.

111. On the sale of provisions, there is an implied warranty that they are sound.

Warranty of bulk implied on sale by sample.

112. On the sale of goods by sample, there is an implied warranty that the bulk is equal in quality to the sample.*

Warranty implied where goods are sold as being of a certain denomination.

113. Where goods are sold as being of a certain denomination, there is an implied warranty that they are such goods as are commercially known by that denomination, although the buyer may have bought them by sample, or after inspection of the bulk.

Explanation.—But if the contract specifically states that the goods, though sold as of a certain denomination, are not warranted to be of that denomination, there is no implied warranty.

* See s. 118. *infra*.

Illustrations.

(*a*.) A, at Calcutta, sells to B twelve bags of "waste silk," then on its way from Murshidabad to Calcutta. There is an implied warranty by A that the silk shall be such as is known in the market under the denomination of "waste silk."

(*b*.) A buys, by sample, and after having inspected the bulk, 100 bales of "Fair Bengal" cotton. The cotton proves not to be such as is known in the market as "Fair Bengal." There is a breach of warranty.

Warranty where goods ordered for a specified purpose.

114. Where goods have been ordered for a specified purpose, for which goods of the denomination mentioned in the order are usually sold, there is an implied warranty by the seller that the goods supplied are fit for that purpose.*

Illustration.

B orders of A, a copper-manufacturer, copper for sheathing a vessel. A, on this order, supplies copper. There is an implied warranty that the copper is fit for sheathing a vessel.

Warranty on sale of article of well-known ascertained kind.

115. Upon the sale of an article of a well-known ascertained kind, there is no implied warranty of its fitness for any particular purpose.

Illustration.

B writes to A, the owner of a patent invention for cleaning cotton—"Send me your patent cotton-cleaning machine to clean the cotton at my factory." A sends the machine according to order. There is an implied warranty by A that it is the article known as A's patent cotton-cleaning machine, but none that it is fit for the particular purpose of cleaning the cotton at B's factory.

Seller when not responsible for latent defects.

116. In the absence of fraud and of any express warranty of quality, the seller of an article which answers the description under which it was sold is not responsible for a latent defect in it.

Illustration.

A sells to B a horse. It turns out that the horse had, at the time of the sale, a defect of which A was unaware. A is not responsible for this.

Buyer's right on breach of warranty.

117. Where a specific article, sold with a warranty, has been delivered and accepted, and the warranty is broken, the sale is not thereby rendered voidable; but the buyer is entitled to compensation from the seller for loss caused by the breach of warranty.

Illustration.

A sells and delivers to B a horse warranted sound. The horse proves to have been unsound at the time of sale. The sale is not thereby rendered voidable, but B is entitled to compensation from A for loss caused by the unsoundness.

Right of buyer on breach of warranty in respect of goods not ascertained.

118. Where there has been a contract, with a warranty, for the sale of goods which, at the time of the contract, were not ascertained or not in existence, and the warranty is broken, the buyer may

accept the goods or refuse to accept the goods when tendered,

or keep the goods for a time reasonably sufficient for examining and trying them, and then refuse to accept them; provided that, during such time, he exercises no other act of ownership over them than is necessary for the purpose of examination and trial.

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* See s. 118, *infra*.

Act IX. of 1872.

In any case the buyer is entitled to compensation from the seller for any loss caused by the breach of warranty; but, if he accepts the goods, and intends to claim compensation, he must give notice of his intention to do so within a reasonable time after discovering the breach of the warranty.

Illustrations.

(*a.*) A agrees to sell and, without application on B's part, deliver to B, 200 bales of unascertained cotton by sample. Cotton not in accordance with sample is delivered to B. B may return it if he has not kept it longer than a reasonable time for the purpose of examination.

(*b.*) B agrees to buy of A twenty-five sacks of flour by sample. The flour is delivered to B, who pays the price. B, upon examination, finds it not equal to sample; B afterwards uses two sacks, and sells one. He cannot now rescind the contract and recover the price, but he is entitled to compensation from A for any loss caused by the breach of warranty.

(*c.*) B makes two pairs of shoes for A by A's order. When the shoes are delivered they do not fit A. A keeps both pairs for a day. He wears one pair for a short time in the house and takes a long walk out of doors in the other pair. He may refuse to accept the first pair, but not the second. But he may recover compensation for any loss sustained by the defect of the second pair.

Miscellaneous.

When buyer may refuse to accept, if goods not ordered are sent with goods ordered.

119. When the seller sends to the buyer goods not ordered with goods ordered, the buyer may refuse to accept any of the goods so sent, if there is risk or trouble in separating the goods ordered from the goods not ordered.

Illustration.

A orders of B specific articles of china. B sends these articles to A in a hamper with other articles of china which had not been ordered. A may refuse to accept any of the goods sent.

Effect of wrongful refusal to accept.

120. If a buyer wrongfully refuses to accept the goods sold to him, this amounts to a breach of the contract of sale.

Right of seller as to rescission, on failure of buyer to pay price at time fixed.

121. When goods sold have been delivered to the buyer, the seller is not entitled to rescind the contract, on the buyer's failing to pay the price at the time fixed, unless it was stipulated by the contract that he should be so entitled.

Sale and transfer of lots sold by auction.

122. Where goods are sold by auction, there is a distinct and separate sale of the goods in each lot, by which the ownership thereof is transferred as each lot is knocked down.

Effect of use, by seller, of pretended biddings to raise price.

123. If, at a sale by auction, the seller makes use of pretended biddings to raise the price, the sale is voidable at the option of the buyer.

CHAPTER VIII.—OF INDEMNITY AND GUARANTEE.

'Contract of indemnity' defined.

124. A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a 'contract of indemnity.'

Illustration.

A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees. This is a contract of indemnity.

Rights of indemnity-holder when sued.

125. The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor—

(1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;

(2) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit;

(3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorized him to compromise the suit.

'Contract of guarantee,' 'surety,' 'principal debtor,' and 'creditor.'

126. A 'contract of guarantee' is a contract to perform the promise, or discharge the liability, of a third person in case of his fault. The person who gives the guarantee is called the 'surety;' the person in respect of whose default the guarantee is given is called the 'principal debtor;' and the person to whom the guarantee is given is called the 'creditor.' A guarantee may be either oral or written.

Consideration for guarantee.

127. Anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee.

Illustrations.

(*a.*) B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. This is a sufficient consideration for C's promise.

(*b.*) A sells and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year, and promises that, if he does so C will pay for them in default of payment by B. A agrees to forbear as requested. This is a sufficient consideration for C's promise.

(*c.*) A sells and delivers goods to B. C afterwards, without consideration, agrees to pay for them in default of B. The agreement is void.

Surety's liability.

128. The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

Illustration.

A guarantees to B the payment of a bill of exchange by C, the acceptor. The bill is dishonored by C. A is liable, not only for the amount of the bill, but also for any interest and charges which may have become due on it.

'Continuing guarantee.'

129. A guarantee which extends to a series of transactions is called a 'continuing guarantee.'

Illustrations.

(*a.*) A, in consideration that B will employ C in collecting the rents of B's zamindari, promises B to be responsible, to the amount of 5,000 rupees, for the due collection and payment by C of those rents. This is a continuing guarantee.

Act IX. of 1872.

(*b*.) A guarantees payment to B, a tea-dealer, to the amount of £100, for any tea he may from time to time supply to C. B supplies C with tea to above the value of £100, and C pays B for it. Afterwards B supplies C with tea to the value of £200. C fails to pay. The guarantee given by A was a continuing guarantee, and he is accordingly liable to B to the extent of £100.

(*c*.) A guarantees payment to B of the price of five sacks of flour, to be delivered by B to C, and to be paid for in a month. B delivers five sacks to C. C pays for them. Afterwards B delivers four sacks to C, which C does not pay for. The guarantee given by A was not a continuing guarantee, and accordingly he is not liable for the price of the four sacks.

Revocation of continuing guarantee.

130. A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor.

Illustrations.

(*a*.) A, in consideration of B's discounting, at A's request, bills of exchange for C, guarantees to B, for twelve months, the due payment of all such bills to the extent of 5,000 rupees. B discounts bills for C to the extent of 2,000 rupees. Afterwards, at the end of three months, A revokes the guarantee. This revocation discharges A from all liability to B for any subsequent discount. But A is liable to B for the 2,000 rupees, on default of C.

(*b*.) A guarantees to B, to the extent of 10,000 rupees, that C shall pay all the bills that B shall draw upon him.. B draws upon C. C accepts the bill. A gives notice of revocation. C dishonours the bill at maturity. A is liable upon his guarantee.

Revocation of continuing guarantee by surety's death.

131. The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions.

Liability of two persons primarily liable, not affected by arrangement between them that one shall be surety on other's default.

132. Where two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence.

Illustration.

A and B make a joint and several promissory note to C. A makes it, in fact, as surety for B, and C knows this at the time when the note is made. The fact, that A, to the knowledge of C, made the note as surety for B, is no answer to a suit by C, against A upon the note.

Discharge of surety by variance in terms of contract.

133. Any variance made, without the surety's consent, in the terms of the contract between the principal and the creditor discharges the surety as to transactions subsequent to the variance.

Illustrations.

(*a*.) A becomes surety to C for B's conduct as a manager in C's bank. Afterwards, B and C contract, without A's consent, that B's salary shall be raised, and that he shall become liable for one-fourth of the losses on overdrafts. B allows a customer to overdraw, and the bank loses a sum of money. A is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss.

(*b*.) A guarantees C against the misconduct of B in an office to which B is appointed by C, and of which the duties are defined by an Act of the legislature. By a subsequent Act, the nature of the office is materially altered. Afterwards, B misconducts himself. A is discharged by the change from future liability under his guarantee, though the misconduct of B is in respect of a duty not affected by the later Act.

(*c.*) C agrees to appoint B as his clerk to sell goods at a yearly salary, upon A's becoming surety to C for B's duly accounting for moneys received by him as such clerk. Afterwards, without A's knowledge or consent, C and B agree that B should be paid by a commission on the goods sold by him, and not by a fixed salary. A is not liable for subsequent misconduct of B.

(*d.*) A gives to C a continuing guarantee to the extent of 3,000 rupees for any oil supplied by C to B on credit. Afterwards B becomes embarrassed, and, without the knowledge of A, B and C contract that C shall continue to supply B with oil for ready money, and that the payments shall be applied to the then existing debts between B and C. A is not liable on his guarantee for any goods supplied after this new arrangement.

(*e.*) C contracts to lend B 5,000 rupees on the first March. A guarantees repayment. C pays the 5,000 rupees to B on the first January. A is discharged from his liability, as the contract has been varied, inasmuch as C might sue B for the money before the first of March.

Discharge of surety by release or discharge of principal debtor.

134. The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.*

Illustrations.

(*a.*) A gives a guarantee to C for goods to be supplied by C to B. C supplies goods to B, and afterwards B becomes embarrassed, and contracts with his creditors (including C) to assign to them his property in consideration of their releasing him from their demands. Here B is released from his debt by the contract with C, and A is discharged from his suretyship.

(*b.*) A contracts with B to grow a crop of indigo on A's land, and to deliver it to B at a fixed rate, and C guarantees A's performance of this contract. B diverts a stream of water which is necessary for the irrigation of A's land, and thereby prevents him from raising the indigo. C is no longer liable on his guarantee.

(*c.*) A contracts with B for A fixed price to build a house for B within a stipulated time, B supplying the necessary timber. C guarantees A's performance of the contract. B omits to supply the timber. C is discharged from his suretyship.

Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor.

135. A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.

Surety not discharged when contract made with third person to give time to principal debtor.

136. Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

Illustration.

C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give time to B. A is not discharged.

Creditor's forbearance to sue does not discharge surety.

137. Mere forbearance on the part of the creditor to sue the principal debtor, or to enforce any other remedy against him, does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

Illustrations.

B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his suretyship.

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* See ss. 39, 53, 54, 55, 62, 63, 67, 118, 120, *supra*.

Act IX. of 1872.

138. Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free the surety so released from his responsibility to the other sureties.*

Release of one co-surety does not discharge others.

139. If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

Discharge of surety by creditor's act or omission impairing surety's eventual remedy.

Illustrations.

(*a.*) B contracts to build a ship for C for a given sum, to be paid by instalments as the work reaches certain stages. A becomes surety to C for B's due performance of the contract. C, without the knowledge of A, prepays to B the last two instalments. A is discharged by this prepayment.†

(*b.*) C lends money to B on the security of a joint and several promissory note made in C's favour by B, and by A, as surety for B, together with a bill of sale of B's furniture which gives power to C to sell the furniture, and apply the proceeds in discharge of the note. Subsequently C sells the furniture, but, owing to his misconduct and wilful negligence, only a small price is realized. A is discharged from liability on the note.

(*c.*) A puts M as apprentice to B, and gives a guarantee to B for M's fidelity. B promises on his part that he will, at least once a month, see M make up the cash. B omits to see this done as promised, and M embezzles. A is not liable to B on his guarantee.

140. Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.‡

Rights of surety on payment or performance.

141. A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.§

Surety's right to benefit of creditor's securities.

Illustrations.

(*a.*) C advances to B, his tenant, 2,000 rupees on the guarantee of A. C has also a further security for the 2,000 rupees by a mortgage of B's furniture. C cancels the mortgage. B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture.

(*b.*) C, a creditor, whose advance to B is secured by a decree, receives also a guarantee for that advance from A. C afterwards takes B's goods in execution under the decree, and then, without the knowledge of A, withdraws the execution. A is discharged.

(*c.*) A, as surety for B, makes a bond jointly with B to C, to secure a loan from C to B. Afterwards, C obtains from B a further security for the same debt. Subsequently, C gives up the further security. A is not discharged.

142. Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

Guarantee obtained by misrepresentation invalid.

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* See s. 44, *supra*.

† See s. 133, *supra*.

‡ *E.g.*, the right to stop in transit.

§ See s. 139, *supra*.

Guarantee obtained by concealment invalid.

143. Any guarantee which the creditor has obtained by means of keeping silence as to a material circumstance is invalid.

Illustrations.

(*a.*) A engages B as clerk to collect money for him. B fails to account for some of his receipts, and A in consequence calls upon him to furnish security for his duly accounting. C gives his guarantee for B's duly accounting. A does not acquaint C with B's previous conduct. B afterwards makes default. The guarantee is invalid.

(*b.*) A guarantees to C payment for iron to be supplied by him to B to the amount of 2,000 tons. B and C have privately agreed that B should pay five rupees per ton beyond the market-price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A is not liable as a surety.

Guarantee on contract that creditor shall not act on it until co-surety joins.

144. Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.*

Implied promise to indemnify surety.

145. In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety; and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

Illustrations.

(*a.*) B is indebted to C, and A is surety for the debt. C demands payment from A, and on his refusal sues him for the amount. A defends the suit, having reasonable grounds for doing so, but he is compelled to pay the amount of the debt with costs. He can recover from B the amount paid by him for costs, as well as the principal debt.

(*b.*) C lends B a sum of money, and A, at the request of B, accepts a bill of exchange drawn by B upon A, to secure the amount. C, the holder of the bill, demands payment of it from A, and, on A's refusal to pay, sues him upon the bill. A, not having reasonable grounds for so doing, defends the suit, and has to pay the amount of the bill and costs. He can recover from B the amount of the bill, but not the sum paid for costs, as there was no real ground for defending the action.

(*c.*) A guarantees to C, to the extent of 2,000 rupees, payment for rice to be supplied by C to B. C supplies to B rice to a less amount than 2,000 rupees, but obtains from A payment of the sum of 2,000 rupees, in respect of the rice supplied. A cannot recover from B more than the price of the rice actually supplied.

Co-sureties liable to contribute equally.

146. Where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.†

Illustrations.

(*a.*) A, B, and C, are sureties to D for the sum of 3,000 rupees lent to E. E makes default in payment. A, B, and C are liable, as between themselves, to pay 1,000 rupees each.

(*b.*) A, B, and C are sureties to D for the sum of 1,000 rupees lent to E, and there is a contract between A, B, and C that A is to be responsible to the extent of one-quarter, B to the extent of one-quarter, and C to the extent of one-half. E makes default in payment. As between the sureties, A is liable to pay 250 rupees, B 250 rupees, and C 500 rupees.

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* See s. 33, *supra*.

† See s. 43, *supra*.

Act IX. of 1872.

Liability of co-sureties bound in different sums.

147. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.*

Illustrations.

(*a.*) A, B, and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 30,000 rupees. A, B, and C are each liable to pay 10,000 rupees.

(*b.*) A, B, and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditional for D's duly accounting to E. D makes default to the extent of 40,000 rupees. A is liable to pay 10,000 rupees, and B and C 15,000 rupees each.

(*c.*) A, B, and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 70,000 rupees. A, B, and C, have to pay each the full penalty of his bond.

CHAPTER IX.—OF BAILMENT.

'Bailment,' 'bailor,' and 'bailee' defined.

148. A 'bailment' is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the 'bailor.' The person to whom they are delivered is called the 'bailee.'

Explanation.—If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor of such goods, although they may not have been delivered by way of bailment.

Delivery to bailee how made.

149. The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorized to hold them on his behalf.

Bailor's duty to disclose faults in goods bailed.

150. The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks; and if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

Illustrations.

(*a.*) A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damage sustained.

(*b.*) A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.

Care to be taken by bailee.

151. In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality, and value as the goods bailed.†

* See s. 43, *supra*.

† As to railway contracts, see Act IV. of 1879, s. 10.

152. The bailee, in the absence of any special contract, is not responsible for the loss, destruction, or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151.

Bailee when not liable for loss, &c., of things bailed.

153. A contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment.

Termination of bailment by bailee's act inconsistent with conditions.

Illustration.

A lets to B, for hire, a horse for his own riding. B drives the horse in his carriage. This is, at the option of A, a termination of the bailment.

154. If the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

Liability of bailee making unauthorized use of goods bailed.

Illustrations.

(*a*.) A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls, and is injured. B is liable to make compensation to A for the injury done to the horse.

(*b*.) A hires a horse in Calcutta from B expressly to march to Benares. A rides with due care, but marches to Katak instead. The horse accidentally falls, and is injured. A is liable to make compensation to B for the injury to the horse.

155. If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced.

Effect of mixture with bailor's consent of his goods with bailee's.

156. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expense of separation or division, and any damage arising from the mixture.

Effect of mixture, without bailor's consent, when the goods can be separated.

Illustration.

A bails 100 bales of cotton marked with a particular mark to B. B, without A's consent, mixes the 100 bales with other bales of his own, bearing a different mark. A is entitled to have his 100 bales returned, and B is bound to bear all the expense incurred in the separation of the bales, and any other incidental damage.

157. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods, and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

Effect of mixture, without bailor's consent, when the goods cannot be separated.

Illustration.

A bails a barrel of Cape flour, worth Rs. 45, to B. B, without A's consent, mixes the flour with country flour of his own, worth only Rs. 25 a barrel. B must compensate A for the loss of his flour.

158. Where, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

Repayment by bailor of necessary expenses.

Act IX. of 1872.

Restoration of goods lent gratuitously.

159. The lender of a thing for use may at any time require its return, if the loan was gratuitous, even though he lent it for a specified time or purpose. But, if, on the faith of such loan made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.*

Return of goods bailed on expiration of time or accomplishment of purpose.

160. It is the duty of the bailee to return, or deliver according to the bailor's directions, the goods bailed without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.†

Bailee's responsibility when goods are not duly returned.

161. If, by the fault of the bailee, the goods are not returned, delivered, or tendered at the proper time, he is responsible to the bailor for any loss, destruction, or deterioration of the goods from that time.‡

Termination of gratuitous bailment by death.

162. A gratuitous bailment is terminated by the death either of the bailor or of the bailee.

Bailor entitled to increase or profit from goods bailed.

163. In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

Illustration.

A leaves a cow in the custody of B to be taken care of. The cow has a calf. B is bound to deliver the calf as well as the cow to A.

Bailor's responsibility to bailee.

164. The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods, or to give directions respecting them.

Bailment by several joint owners.

165 If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary.

Bailee not responsible on re-delivery to bailor without title.

166. If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery. §

Right of third person claiming goods bailed.

167. If a person, other than the bailor, claims goods bailed, he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods.

Right of finder of goods.

168. The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner; but

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* See Story, *Bailments*, § 258.

† But see ss. 24, 152, *supra*, and 170, *infra*, to the provisions of which this section must be subject.

‡ As to railway contracts, see Act IX. of 1890.

§ See Act I. of 1872, s. 117.

he may retain the goods against the owner until he receives such compensation; and where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it. *

May sue for specific reward offered.

169. When a thing, which is commonly the subject of sale, is lost, if the owner cannot, with reasonable diligence, be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it—

When finder of thing commonly on sale may sell it.

(1) when the thing is in danger of perishing or of losing the greater part of its value; or,

(2) when the lawful charges of the finder in respect of the thing found amount to two-thirds of its value. †

170. Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.

Bailee's particular lien.

Illustrations.

(*a.*) A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered.

(*b.*) A gives cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give A three months' credit for the price. B is not entitled to retain the coat until he is paid.

171. Bankers, factors, wharfingers, attorneys of a High Court, and policy-brokers, may, in the absence of a contract to the contrary, retain, as a security for a general balance of account, any goods ‡ bailed to them;§ but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect. ‖

General lien of bankers, factors, wharfingers, attorneys, and policy-brokers.

Bailments of Pledges.

172. The bailment of goods as security for payment of a debt or performance of a promise is called 'pledge.' The bailor is in this case called the 'pawnor.' The bailee is called the 'pawnee.'

'Pledge,' 'pawnor,' and 'pawnee' defined.

173. The pawnee may retain the goods pledged, not only for payment of the debt, or the performance of the promise, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

Pawnee's right of retainer.

174. The pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged, but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.

Pawnee not to retain for debt or promise other than that for which goods pledged.

Presumption in case of subsequent advances.

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* See Story, *Bailments*, § 121a.

† *New York Civil Code*, § 943.

‡ Whether belonging to the bailor or not.

§ As such?

‖ As to the lien of an agent, see s. 221, *infra*. As to the lien of Railway Administrations, see Act IX. of 1890.

Act IX. of 1872.

175. The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

Pawnee's right as to extraordinary expenses incurred.

176. If the pawnor makes default in payment of the debt, or performance, at the stipulated time, of the promise, in respect of which the goods were pledged, the pawnee may bring a suit* against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale.

Pawnee's rights where pawnor makes default.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

177. If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them;† but he must, in that case, pay, in addition, any expenses which have arisen from his default.

Default in pawnor's right to redeem.

178. A person who is in possession of any goods, or of any bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate, or warrant or order for delivery, or any other document of title to goods, may make a valid pledge of such goods or documents: Provided that the pawnee acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the pawnor is acting improperly:

Pledge by possessor of goods or of documentary title to goods.

Provided also that such goods or documents have not been obtained from their lawful owner, or from any person in lawful custody of them, by means of an offence or fraud.‡

179. Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

Pledge where pawnor has only a limited interest.

Suits by Bailees or Bailors against Wrong-doers.

180. If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

Suit by bailor or bailee against wrong-doer.

181. Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

Apportionment of relief or compensation obtained by such suits.

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* Within three years from the making of the loan or the breach of the promise.—Act XV. of 1877, Sch. II., Nos. 57, 115.

† For limitation, see Act XV. of 1877, Sch. II., No. 145.

‡ See 5 & 6 Vic., c. 39, ss. 1 and 3.

CHAPTER X.—AGENCY.

Appointment and Authority of Agents.

'Agent' and 'principal' defined.

182. An 'agent' is a person employed to do any act for another,* or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the 'principal.'

Who may employ agent.

183. Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.†

Who may be an agent.

184. As between the principal and third persons, any person may become an agent; but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained.

Consideration not necessary.

185. No consideration is necessary to create an agency.

Agent's authority may be expressed or implied.

186. The authority of an agent may be expressed or implied.‡

Definitions of express and implied authority.

187. An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

Illustration.

A owns a shop in Serampore, living himself in Calcutta, and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purposes of the shop, and of paying for them out of A's funds with A's knowledge. B has an implied authority from A to order goods from C in the name of A for the purposes of the shop.

Extent of agent's authority.

188. An agent, having an authority to do an act, has authority to do every lawful thing which is necessary in order to do such act.

An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business.

Illustrations.

(*a.*) A is employed by B, residing in London, to recover at Bombay a debt due to B A may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

(*b.*) A constitutes B his agent to carry on his business of a ship-builder. B may purchase timber and other materials, and hire workmen, for the purpose of carrying on the business.

Agent's authority in an emergency.

189. An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence in his own case under similar circumstances.§

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* Cf. s. 225, *infra*. As to the effect of an agent's fraud, see s. 17, *supra*; and s. 238, *infra*.

† Cf. s. 11, *supra*.

‡ But see Act III. of 1877, s. 33; Act XIV. of 1882, s. 39.

§ But see s. 214, *infra*.

Illustrations.

(*a*.) An agent for sale may have goods repaired if it be necessary.

(*b*.) A consigns provisions to B at Calcutta, with directions to send them immediately to C at Katak. B may sell the provisions at Calcutta, if they will not bear the journey to Katak without spoiling.

Sub-Agents.

190. An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of the agency, a sub-agent must, be employed.

When agent cannot delegate.

191. A 'sub-agent' is a person employed by, and acting under the control of, the original agent in the business of the agency.

'Sub-agent' defined.

192. Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent, and is bound by, and responsible for, his acts, as if he were an agent originally appointed by the principal.

Representation of principal by sub-agent properly appointed.

The agent is responsible to the principal for the acts of the sub-agent.

Agent's responsibility for sub-agent.

The sub-agent is responsible for his acts to the agent, but not to the principal, except in cases of fraud or wilful wrong.

Sub-agent's responsibility.

193. Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons; the principal is not represented by, or responsible for the acts of, the person so employed,* nor is that person responsible to the principal.

Agent's responsibility for sub-agent appointed without authority.

194. Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent, of the principal for such part of the business of the agency as is entrusted to him.

Relation between principal and person duly appointed by agent to act in business of agency.

Illustrations.

(*a*.) A directs B, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a sub-agent, but is A's agent for the conduct of the sale.

(*b*.) A authorizes B, a merchant in Calcutta, to recover the moneys due to A from C & Co. B instructs D, a solicitor, to take legal proceedings against C & Co. for the recovery of the money. D is not a sub-agent, but is solicitor for A.

195. In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

Agent's duty in naming such person.

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* Unless, of course, he ratifies them, see s. 196, *infra*.

Illustrations.

(*a.*) A instructs B, a merchant, to buy a ship for him. B employs a ship-surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently, and the ship turns out to be unseaworthy, and is lost. B is not, but the surveyor is, responsible to A.

(*b.*) A consigns goods to B, a merchant, for sale. B, in due course, employs an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.

Ratification.

Right of person as to acts done for him without his authority.
Effect of ratification.

196. Where acts* are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such act. If he ratify them, the same effects will follow as if they had been performed by his authority.

Ratification may be expressed or implied.

197. Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

Illustrations.

(*a.*) A, without authority, buys goods for B. Afterwards B sells them to C on his own account. B's conduct implies a ratification of the purchase made for him by A.

(*b.*) A, without B's authority, lends B's money to C. Afterwards B accepts interest on the money from C. B's conduct implies a ratification of the loan.

Knowledge requisite to valid ratification.

198. No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

Effect of ratifying unauthorized act forming part of a transaction.

199. A person ratifying any unauthorized act done on his behalf ratifies the whole of the transaction of which such act formed a part.

Ratification of unauthorized act cannot injure third person.

200. An act done by one person on behalf of another without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

Illustrations.

(*a.*) A not being authorized thereto by B, demands, on behalf of B, the delivery of a chattel, the property of B, from C, who is in possession of it. This demand cannot be ratified by B, so as to make C liable for damages for his refusal to deliver.

(*b.*) A holds a lease from B, terminable on three months' notice. C, an unauthorized person, gives notice of termination to A. The notice cannot be ratified by B, so as to be binding on A.

Revocation of Authority.

Termination of agency.

201. An agency is terminated by the principal revoking his authority; or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

Termination of agency where agent has an interest in subject-matter.

202. Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

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* *I. e.*, lawful acts.

Act IX. of 1872.

Illustrations.

(*a.*) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.

(*b.*) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself out of the price the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death.

When principal may revoke agent's authority.

203. The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

Revocation where authority has been partly exercised.

204. The principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency.

Illustrations.

(*a.*) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's moneys remaining in B's hands. B buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.

(*b.*) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's moneys remaining in B's hands. B buys 1,000 bales of cotton in A's name, and so as not to render himself personally liable for the price. A can revoke B's authority to pay for the cotton.

Compensation for revocation by principal, or renunciation by agent.

205. Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation* to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.

Notice of revocation or renunciation.

206. Reasonable notice must be given of such revocation or renunciation; otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

Revocation and renunciation may be expressed or implied.

207. Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively.

Illustration.

A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.

When termination of agent's authority takes effect as to agent and as to third persons.

208. The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

Illustrations.

(*a.*) A directs B to sell goods for him, and agrees to give B five per cent. commission on the price fetched by the goods. A afterwards, by letter, revokes B's authority. B, after the letter is sent, but before he receives it, sells the goods for 100 rupees. The sale is binding on A, and B is entitled to five rupees as his commission.

(*b.*) A, at Madras, by letter, directs B to sell for him some cotton lying in a warehouse in Bombay, and afterwards, by letter, revokes his authority to sell, and directs B to send the cotton to Madras. B, after receiving the second letter, enters into a contract with C, who knows of the first letter, but not of the second, for the sale to him of the cotton. C pays B the money, with which B absconds. C's payment is good as against A.

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* See s. 73, *supra*.

(*c*.) A directs B, his agent, to pay certain money to C. A dies, and D takes out probate to his will. B, after A's death, but before hearing of it, pays the money to C. The payment is good as against D, the executor.

Agent's duty on termination of agency by principal's death or insanity.

209. When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

Termination of sub-agent's authority.

210. The termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

Agent's Duty to Principal.

Agent's duty in conducting principal's business.

211. An agent is bound to conduct the business of his principal according to the directions given by the principal,* or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

Illustrations.

(*a*.) A, an agent engaged in carrying on for B a business, in which it is the custom to invest from time to time, at interest, the moneys which may be in hand, omits to make such investment. A must make good to B the interest usually obtained by such investments.

(*b*.) B, a broker, in whose business it is not the custom to sell on credit, sells goods of A on credit to C, whose credit at the time was very high. C, before payment, becomes insolvent. B must make good the loss to A.

Skill and diligence required from agent.

212. An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill, or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill, or misconduct.

Illustrations.

(*a*.) A, a merchant in Calcutta, has an agent, B, in London, to whom a sum of money is paid on A's account, with orders to remit. B retains the money for a considerable time. A, in consequence of not receiving the money, becomes insolvent. B is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss—as, *e.g.*, by variation of rate of exchange —but not further.

(*b*.) A, an agent for the sale of goods, having authority to sell on credit, sells to B on credit, without making the proper and usual enquiries as to the solvency of B. B, at the time of such sale, is insolvent. A must make compensation to his principal in respect of any loss thereby sustained.

(*c*.) A, an insurance-broker employed by B to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. A is bound to make good the loss to B.

(*d*.) A, a merchant in England, directs B, his agent at Bombay, who accepts the agency, to send him 100 bales of cotton by a certain ship. B, having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her

* But see s. 189, *supra*.

Act IX. of 1872.

arrival the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

Agent's accounts.

213. An agent is bound to render proper accounts to his principal on demand.

Agent's duty to communicate with principal.

214. It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.*

Right of principal when agent deals on his own account in business of agency without principal's consent.

215. If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal, and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case shows either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

Illustrations.

(*a*.) A directs B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale, if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

(*b*.) A directs B to sell A's estate. B, on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceals the discovery of the mine. A allows B to buy, in ignorance of the existence of the mine. A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

Principal's right to benefit gained by agent dealing on his own account in business of agency.

216. If an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

Illustration.

A directs B, his agent, to buy a certain house for him. B tells A it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

Agent's right of retainer out of sums received on principal's account.

217. An agent may retain,† out of any sums received on account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

Agent's duty to pay sums received for principal.

218. Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

When agent's remuneration becomes due.

219. In the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of such act; but an agent may detain moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale may not have been sold, or although the sale may not be actually complete.

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* See s. 189, *supra*.

† See s. 221, *infra*.

220. An agent, who is guilty of misconduct in the business of the agency,* is not entitled to any remuneration in respect of that part of the business which he has misconducted.

Agent not entitled to remuneration for business misconducted.

Illustrations.

(*a.*) A employs B to recover 1,00,000 rupees from C, and to lay it out on good security. B recovers the 1,00,000 rupees, and lays out 90,000 rupees on good security, but lays out 10,000 rupees on security which he ought to have known to be bad, whereby A loses 2,000 rupees. B is entitled to remuneration for recovering the 1,00,000 rupees and for investing the 90,000 rupees. He is not entitled to any remuneration for investing the 10,000 rupees, and he must make good the 2,000 rupees to B.

(*b.*) A employs B to recover 1,000 rupees from C. Through B's misconduct the money is not recovered. B is entitled to no remuneration for his services and must make good the loss.

221. In the absence of any contract to the contrary, an agent is entitled to retain goods, papers, and other property, whether moveable or immoveable, of the principal received by him, until the amount due to himself for commission, disbursements, and services in respect of the same, has been paid or accounted for to him. †

Agent's lien on principal's property.

Principal's Duty to Agent.

222. The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.

Agent to be indemnified against consequences of lawful acts.

Illustrations.

(*a.*) B, at Singapur, under instructions from A, of Calcutta, contracts with C to deliver certain goods to him. A does not send the goods to B, and C sues B for breach of contract. B informs A of the suit, and A authorizes him to defend the suit. B defends the suit, and is compelled to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs, and expenses.

(*b*) B, a broker at Calcutta, by the orders of A, a merchant there, contracts with C for the purchase of 10 casks of oil for A. Afterwards A refuses to receive the oil, and C sues B ‡ B informs A, who repudiates the contract altogether. B defends, but unsuccessfully, and has to pay damages and costs, and incur expenses. A is liable to B for such damages, costs, and expenses.

223. Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it cause an injury to the rights of third persons.

Agent to be indemnified against consequences of acts done in good faith.

Illustrations.

(*a.*) A, a decree-holder, and entitled to execution of B's goods, requires the officer of the Court to seize certain goods representing them to be the goods of B. The officer seizes the goods, and is sued by C, the true owner of the goods. A is liable to indemnify the officer for the sum which he is compelled to pay to C in consequence of obeying A's directions.

(*b.*) B, at the request of A, sells goods in the possession of A, but which A had no right to dispose of. B does not know this, and hands over the proceeds of the sale to A. Afterwards C, the true owner of the goods, sues B, and recovers the value of the goods and costs. A is liable to indemnify B for what he has been compelled to pay to C, and for B's own expenses.

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* See ss. 195, 211, 212, 213, 214, 218, *supra*.

† As to the general lien of an agent who is a banker, factor, attorney, or policy broker, see s. 171, *supra*.

‡ It must be assumed that the disclosed principal could not be sued, see s. 230, *infra*.

Act IX. of 1872.

Non-liability of employer of agent to do a criminal act.

224. Where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise to indemnify him against the consequenees of that act.*

Illustrations.

(*a.*) A employs B to beat C, and agrees to indemnify him against all consequences of the act. B thereupon beats C, and has to pay damages to C for so doing. A is not liable to indemnify B for those damages.

(*b.*) B, the proprietor of a newspaper, publishes, at A's request, a libel upon C in the paper, and A agrees to indemnify B against the consequences of the publication, and all costs and damages of any action in respect thereof. B is sued by C, and has to pay damages, and also incurs expenses. A is not liable to B upon the indemnity.

Compensation to agent for injury caused by principal's neglect.

225. The principal must make compensation to his agent in respect of injury caused to such agent by the principal's neglect or want of skill.

Illustration.

A employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskilfully put up, and B is in consequence hurt. A must make compensation to B.

Effect of Agency on Contracts with third persons.

Enforcement and consequences of agent's contracts.

226. Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences, as if the contracts had been entered into and the acts done by the principal in person.

Illustrations.

(*a.*) A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim from A the price of the goods, and A cannot, in a suit by the principal, set off against that claim a debt due to himself from B.

(*b.*) A, being B's agent, with authority to receive money on his behalf, receives from C a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.

Principal how far bound, when agent exceeds authority.

227. When an agent does more than he is authorized to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal.

Illustration.

A, being owner of a ship and cargo, authorizes B to procure an insurance for 4,000 rupees on the ship. B procures a policy for 4,000 rupees on the ship, and another for the like sum on the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

Principal not bound when excess of agent's authority is not separable.

228. Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction.

Illustration.

A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of 6,000 rupees. A may repudiate the whole transaction.

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* See s. 24, *supra*.

229. Any notice given to, or information obtained by, the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequence as if it had been given to, or obtained by, the principal.

Consequences of notice given to agent.

Illustrations.

(*a*.) A is employed by B to buy from C certain goods, of which C is the apparent owner, and buys them accordingly. In the course of the treaty for the sale, A learns that the goods really belonged to D, but B is ignorant of that fact. B is not entitled to set off a debt owing to him from C against the price of the goods.

(*b*.) A is employed by B to buy from C goods of which C is the apparent owner. A was, before he was so employed, a servant of C, and then learnt that the goods really belonged to D, but B is ignorant of that fact. In spite of the knowledge of his agent, B may set off against the price of the goods a debt owing to him from C.

Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.

230. In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Presumption of contract to contrary.

Such a contract shall be presumed to exist in the following cases :—

(1.) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad :

(2.) Where the agent does not disclose the name of his principal :

(3.) Where the principal, though disclosed, cannot be sued.

231. If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract ; but the other contracting party has, as against the principal, the same rights as he would have had as against the agent if the agent had been principal.

Rights of parties to a contract made by agent not disclosed.

If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.

232. Where one man makes a contract with another, neither knowing, nor having reasonable ground to suspect, that the other is an agent, the principal, if he requires the performance of the contract, can only obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract.

Performance of contract with agent supposed to be principal.

Illustration.

A, who owes 500 rupees to B, sells 1,000 rupees' worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge, nor reasonable ground of suspicion, that such is the case. C cannot compel B to take the rice without allowing him to set off A's debt.

233. In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable.

Right of person dealing with agent personally liable.

Illustration.

A enters into a contract with B to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C. A may sue either B or C, or both, for the price of the cotton.

234. When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively.

Consequence of inducing agent of principal to act on belief that principal or agent will be held exclusively liable.

235. A person untruly* representing himself to be the authorized agent of another, and thereby inducing a third person to deal with him as such agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing.

Liability of pretended agent.

236. A person with whom a contract has been entered into in the character of agent is not entitled to require the performance of it, if he was in reality acting, not as agent, but on his own account.

Person falsely contracting as agent not entitled to performance.

237. When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations, if he has, by his words or conduct, induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.

Liability of principal inducing belief that agent's unauthorized acts were authorized.

Illustrations.

(*a*.) A consigns goods to B for sale, and gives h im instructions not to sell under a fixed price. C, being ignorant of B's instructions, enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract.

(*b*.) A entrusts B with negotiable instruments endorsed in blank. B sells them to C in violation of private orders from A. The sale is good.

238. Misrepresentations made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principals;† but misrepresentations made, or frauds committed, by agents in matters which do not fall within their authority do not affect their principals.

Effect, on agreement, of misrepresentation or fraud by agent.

Illustrations.

(*a*.) A, being B's agent for the sale of goods, induces C to buy them by a misrepresentation which he was not authorized by B to make. The contract is voidable as between B and C at the option of C.

(*b*.) A, the captain of B's ship, signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between B and the pretended consignor.

CHAPTER XI.—OF PARTNERSHIP.

239. 'Partnership' is the relation which subsists between persons who have agreed to combine their property, labour, or skill in some business, and to share the profits thereof between them.‡

'Partnership' defined.

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* See s. 208, *supra*.

† See s. 250, *infra*.

‡ This would apply to members of joint-stock companies: but the law applicable to them is saved by s. 266, *infra*.

'Firm' defined.

Persons who have entered into partnership with one another are called collectively a 'firm.'

Illustrations.

(*a.*) A and B buy 100 bales of cotton, which they agree to sell for their joint account. A and B are partners in respect of such cotton.

(*b.*) A and B buy 100 bales of cotton, agreeing to share it between them. A and B are not partners.

(*c.*) A agrees with B, a goldsmith, to buy and furnish gold to B, to be worked up by him and sold, and that they shall share in the resulting profits or loss. A and B are partners.

(*d.*) A and B agree to work together as carpenters, but that A shall receive all profits and shall pay wages to B. A and B are not partners.

(*e.*) A and B are joint owners of a ship. This circumstance does not make them partners.

240. A loan to a person engaged or about to engage in any trade or undertaking, upon a contract with such person that the lender shall receive interest at a rate varying with the profits, or that he shall receive a share of the profits, does not, of itself, constitute the lender a partner, or render him responsible as such.*

Lender not a partner by advancing money for share of profits.

241. In the absence of any contract to the contrary, property left by a retiring partner, or the representative of a deceased partner to be used in the business, is to be considered a loan within the meaning of the last preceding section.

Property left in business by retiring partner, or deceased partner's representative.

242. No contract for the remuneration of a servant or agent of any person, engaged in any trade or undertaking, by a share of the profits of such trade or undertaking, shall, of itself, render such servant or agent responsible as a partner therein, nor give him the rights of a partner.

Servant or agent remunerated by share of profits, not a partner.

243. No person being a widow or child of a deceased partner of a trader, and receiving, by way of annuity, a proportion of the profits made by such trader in his business, shall, by reason only of such receipt, be deemed to be a partner of such trader, or be subject to any liabilities incurred by him.

Widow or child of deceased partner receiving annuity out of profits not a partner.

244. No person receiving, by way of annuity or otherwise, a portion of the profits of any business, in consideration of the sale by him of the good-will of such business, shall, by reason only of such receipt, be deemed to be a partner of the person carrying on such business, or be subject to his liabilities.†

Person receiving portion of profits for sale of good-will not a partner.

245. A person who has, by words spoken or written, or by his conduct, led another to believe that he is a partner in a particular firm, is responsible to him as a partner in such firm.

Responsibility of person leading another to believe him a partner.

246. Any one consenting to allow himself to be represented as a partner is liable, as such, to third persons who, on the faith thereof, give credit to the partnership.‡

Liability of person permitting himself to be represented as a partner.

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* See *Mollwo, March, & Co.* v. *Court of Wards*, 10 B. L. R. 312.

† 28 & 29 Vic., c. 86.

‡ See Act I. of 1872, s. 109.

Act IX. of 1872.

247. A person, who is under the age of majority according to the law to which he is subject,* may be admitted to the benefits of partnership, but cannot be made personally liable for any obligation of the firm; but the share of such minor in the property of the firm is liable for the obligations of the firm.

Minor partner not personally liable, but his share is.

248. A person who has been admitted to the benefits of partnership under the age of majority* becomes, on attaining that age, liable for all obligations incurred by the partnership since he was so admitted, unless he gives public notice, within a reasonable time, of his repudiation of the partnership.

Liability of minor partner on attaining majority.

249. Every partner is liable for all debts and obligations incurred while he is a partner in the usual course of business by or on behalf of the partnership; but a person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of such firm for any thing done before he became a partner.

Partner's liability for debts of partnership.

250. Every partner is liable to make compensation to third persons in respect of loss or damage arising from the neglect or fraud of any partner in the management of the business of the firm.

Partner's liability to third person for neglect or fraud of co-partner.

251. Each partner, who does any act necessary for, or usually done in, carrying on the business of such a partnership as that of which he is a member, binds his co-partners to the same extent as if he were their agent duly appointed for that purpose.

Partner's power to bind co-partners.

Exception.—If it has been agreed between the partners that any restriction shall be placed upon the power of any one of them, no act done in contravention of such agreement shall bind the firm with respect to persons having notice of such agreement.

Illustrations.

(*a.*) A and B trade in partnership, A residing in England, and B in India. A draws a bill of exchange in the name of the firm. B has no notice of the bill, nor is he at all interested in the transaction. The firm is liable on the bill, provided the holder did not know of the circumstances under which the bill was drawn.

(*b.*) A, being one of a firm of solicitors and attorneys, draws a bill of exchange in the name of the firm without authority. The other partners are not liable on the bill.

(*c*) A and B carry on business in partnership as bankers. A sum of money is received by A on behalf of the firm. A does not inform B of such receipt, and afterwards A appropriates the money to his own use. The partnership is liable to make good the money.

(*d.*) A and B are partners. A, with the intention of cheating B, goes to a shop and purchases articles on behalf of the firm, such as might be used in the ordinary course of the partnership-business, and converts them to his own separate use, there being no collusion between him and the seller. The firm is liable for the price of the goods.

252. Where partners have by contract regulated and defined, as between themselves, their rights and obligations, such contract can be annulled or altered only by consent of all† of them, which consent must either be expressed or be implied from a uniform course of dealing.

Annulment of contract defining partners' rights and obligations.

Illustration.

A, B, and C, intending to enter into partnership, execute written articles of agreement, by which it is stipulated that the net profits arising from the partnership-business shall be equally divided between them. Afterwards they carry on the partnership-business for many years, A receiving one-half of the nett profits, and the other half being divided equally between B and C. All parties know of and acquiesce in this arrangement. This course of dealing supersedes the provision in the articles as to the division of profits.

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* See Act IX. of 1875.

† Cf. s. 253, cl. 5, *infra*.

Rules determining partners' mutual relations, where no contract to contrary.

253. In the absence of any contract to the contrary, the relations of partners to each other are determined by the following rules :—

(1.) All partners are joint owners of all property originally brought into the partnership-stock, or bought with money belonging to the partnership, or acquired for purposes of the partnership-business. All such property is called partnership-property. The share of each partner in the partnership-property is the value of his original contribution, increased or diminished by his share of profit or loss :

(2.) All partners are entitled to share equally in the profits of the partnership-business, and must contribute equally towards the losses sustained by the partnership :

(3.) Each partner has a right to take part in the management of the partnership-business :

(4.) Each partner is bound to attend diligently to the business of the partnership, and is not entitled to any remuneration for acting in such business :

(5.) When differences arise as to ordinary matters connected with the partnership-business, the decision shall be according to the opinion of the majority of the partners ; but no change in the nature of the business of the partnership can be made, except with the consent of all the partners : *

(6.) No person can introduce a new partner into a firm without the consent of all the partners :

(7.) If, from any cause whatsoever, any member of a partnership ceases to be so, the partnership is dissolved as between all the other members :

(8.) Unless the partnership has been entered into for a fixed term, any partner may retire from it at any time :

(9.) Where a partnership has been entered into for a fixed term, no partner can, during such term, retire, except with the consent of all the partners, nor can he be expelled by his partners for any cause whatever, except by order of Court :

(10.) Partnerships, whether entered into for a fixed term or not, are dissolved by the death of any partner.

When Court may dissolve partnership.

254. At the suit of a partner the Court may dissolve the partnership in the following cases :—

(1.) When a partner becomes of unsound mind :

(2.) When a partner, other than the partner suing, has been adjudicated an insolvent under any law relating to insolvent debtors :

(3.) When a partner, other than the partner suing, has done any act by which the whole interest of such partner is legally transferred to a third person :

(4.) When any partner becomes incapable of performing his part of the partnership contract :

(5.) When a partner, other than the partner suing, is guilty of gross misconduct in the affairs of the partnership or towards his partners :

(6.) When the business of the partnership can only be carried on at a loss.

Dissolution of partnership by prohibition of business.

255. A partnership is in all cases dissolved by its business being prohibited by law.

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* See s. 253, *supra*.

Act IX. of 1872.

Rights and obligations of partners in partnership continued after expiry of term for which it was entered into.

256. If a partnership, entered into for a fixed term, be continued after such term has expired, the rights and obligations of the partners will, in the absence of any agreement to the contrary, remain the same as they were at the expiration of the term, so far as such rights and obligations can be applied to a partnership dissolvable at the will of any partner.

General duties of partners.

257. Partners are bound to carry on the business of the partnership for the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

Account to firm of benefit derived from transaction affecting partnership.

258. A partner must account to the firm for any benefit derived from a transaction affecting the partnership.

Illustrations.

(*a.*) A, B, and C are partners in trade. C, without the knowledge of A and B, obtains for his own sole benefit a lease of the house in which the partnership-business is carried on. A and B are entitled to participate, if they please, in the benefit of the lease.

(*b.*) A, B, and C carry on business together in partnership as merchants trading between Bombay and London. D, a merchant in London, to whom they make their consignments, secretly allows C a share of the commission which he receives upon such consignments, in consideration of C's using his influence to obtain the consignments for him. C is liable to account to the firm for the money so received by him.

Obligations, to firm, of partner carrying on competing business.

259. If a partner, without the knowledge and consent of the other partners, carries on any business competing or interfering with that of the firm, he must account to the firm for all profits made in such business, and must make compensation to the firm for any loss occasioned thereby.

Revocation of continuing guarantee by change in firm.

260. A continuing guarantee, given either to a firm or to a third person, in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or in respect of the transactions of which, such guarantee was given.*

Non-liability of deceased partner's estate for subsequent obligations.

261. The estate of a partner who has died is not, in the absence of an express agreement, liable in respect of any obligation incurred by the firm after his death.

Payment of partnership-debts and of separate debts.

262. Where there are joint debts due from the partnership and also separate debts due from any partner, the partnership-property must be applied in the first instance in payment of the debts of the firm ; and if there is any surplus, then the share of each partner must be applied in payment of his separate debts, or paid to him. The separate property of any partner must be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.

Continuance of partners' rights and obligations after dissolution.

263. After a dissolution of partnership, the rights and obligations of the partners continue in all things necessary for winding up the business of the partnership.

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* 19 & 20 Vic., c. 97, s. 4.

264. Persons dealing with a firm will not be affected by a dissolution of which no public notice has been given, unless they themselves had notice of such dissolution.

Notice of dissolution.

265.* Where a partner is entitled to claim a dissolution of partnership, or where a partnership has terminated, the Court may, in the absence of any contract to the contrary, wind up the business of the partnership, provide for the payment of its debts, and distribute the surplus according to the shares of the partners respectively.

Winding up by Court on dissolution or after termination.

266. Extraordinary partnerships, such as partnerships with limited liability, incorporated partnerships, and joint-stock companies shall be regulated by the law for the time being in force relating thereto.†

Limited liability partnerships, incorporated partnerships, and joint-stock companies.

SCHEDULE—ENACTMENTS REPEALED.

Statutes.

No. and year of Statute.	TITLE.	Extent of repeal.
Stat. 29 Car. II., cap. 3.	An Act for the prevention of Frauds and Perjuries.	Sections 1, 2, 3, 4, and 17.
Stat. 11 and 12 Vic., cap. 21.	To consolidate and amend the law relating to insolvent debtors in India.	Section 42.

Acts.

No. and year of Act.	TITLE.	Extent of repeal.
Act XIII. of 1840 ...	An Act for the amendment of the law regarding factors, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Stat. 4 Geo. IV., c. 83, as altered and amended by the Stat. 6 Geo. IV., c. 94.	The whole.
Act XIV. of 1840 ...	An Act for rendering a written memorandum necessary to the validity of certain promises and engagements, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Stat. 9 Geo. IV., c. 14.	The whole.

* This section has been substituted by Act IV. of 1886, s. 1, for the one originally enacted.

† See Act VI. of 1882 and the following special Acts: V. of 1838, amended by V. of 1854 (*Bengal Bonded Warehouse*); V. of 1857, amended by XI. of 1867 (*Oriental Gas Company*); XI. of 1876 (*Presidency Banks*); Madras Act VI. of 1869 (*Madras Equitable Assurance Society*).

Act IX. of 1872.

SCHEDULE—ENACTMENTS REPEALED (*continued*).

Acts—(contd.).

No. and year of Act.	TITLE.	Extent of repeal.
Act XX. of 1844 ...	An Act to amend the law relating to Advances *bonâ fide* made to Agents intrusted with goods, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Stat. 5 & 6 Vic., c. 39, as altered by this Act.	The whole.
Act XXI. of 1848 ...	An Act for avoiding Wagers ...	The whole.
Act V. of 1866 ...	An Act to provide a summary procedure on bills of exchange, and to amend in certain respects the commercial law of British India.	Sections 9 & 10.
Act XV. of 1866 ...	An Act to amend the law of partnership in India.	The whole.
Act VIII. of 1867 ...	An Act to amend the law relating to Horse-racing in India.	The whole.

ACT XV. OF 1872.*

Act XV. of 1872.

THE INDIAN CHRISTIAN MARRIAGE ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 18TH JULY 1872.

An Act to consolidate and amend the law relating to the solemnization in India of the marriages of Christians.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to the solemnization in India of the marriages of persons professing the Christian religion; It is hereby enacted as follows:—

PRELIMINARY.

Short title.

1. This Act may be called "The Indian Christian Marriage Act, 1872;"

Extent.

It extends to the whole of British India, and, so far only as regards Christian subjects of Her Majesty, to the territories of Native Princes and States in alliance with Her Majesty.

Enactments repealed.

2. The enactments specified in the fifth schedule hereto annexed are repealed, but not so as to invalidate any marriage confirmed by, or solemnized under, any such enactment.

And all appointments made, licenses granted, consents given, certificates issued, and other things duly done, under any such enactment, shall be deemed to be respectively made, granted, given, issued, and done under this Act.

For clause xxiv. of section nineteen of the Court Fees Act, 1870, the following shall be substituted:—

"xxiv. Petitions under the Indian Christian Marriage Act, 1872, sections forty-five and forty-eight."

Interpretation-clause.

3. In this Act, unless there is something repugnant in the subject or context—

"Church of England" and "Anglican" mean and apply to the Church of England as by law established;

"Church of Scotland" means the Church of Scotland as by law established;

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* Act XV. of 1872 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	See *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504.
The North-Western Provinces Tarái	Ditto . Sep. 23, 1876, Pt. I., p. 505.

It has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886.

It is included in the Schedule to the Santál Parganas Laws Regulation, III. of 1886.

Act XV. of 1872.

"Church of Rome" and "Roman Catholic" mean and apply to the Church which regards the Pope of Rome as its spiritual head;

"Church" includes any chapel or other building generally used for public Christian worship;

"Minor" means a person who has not completed the age of twenty-one years, and who is not a widower or a widow;

"Native State" means the territories of any Native Prince or State in alliance with Her Majesty;

The expression "Christians" means persons professing the Christian religion;

And the expression "Native Christians" includes the Christian descendants of Natives of India converted to Christianity, as well as such converts.

PART I.

THE PERSONS BY WHOM MARRIAGES MAY BE SOLEMNIZED.

Marriages to be solemnized according to Act.

4. Every marriage between persons, one or both of whom is "or are"* a Christian or Christians, shall be solemnized in accordance with the provisions of the next following section; and any such marriage solemnized otherwise than in accordance with such provisions shall be void.

5. Marriages may be solemnized in India—

Persons by whom marriages may be solemnized.

(1) by any person who has received episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies, and customs of the Church of which he is a Minister;

(2) by any Clergyman of the Church of Scotland, provided that such marriage be solemnized according to the rules, rites, ceremonies, and customs of the Church of Scotland;

(3) by any Minister of Religion licensed under this Act to solemnize marriages;

(4) by, or in the presence of, a Marriage Registrar appointed under this Act;

(5) by any person licensed under this Act to grant certificates of marriage between Native Christians.

Grant and revocation of licenses to solemnize marriages.

6.† The Local Government, so far as regards the territories under its administration, and the Governor-General in Council, so far as regards any Native State, may, by notification in the local official Gazette or in the Gazette of India, as the case may be, grant licenses to Ministers of Religion to solemnize marriages within such territories and State respectively, and may, by a like notification, revoke such licenses.

Marriage Registrars.

7. The Local Government may appoint one or more Christians, either by name, or as holding any office for the time being, to be the Marriage Registrar or Marriage Registrars for any district subject to its administration.‡

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* In s. 4, the words "or are" have been inserted by Act XII. of 1891, Sch. II.

† S. 6 has been substituted by Act II. of 1891, s. 1.

‡ See *Bombay Government Gazette*, Nov. 21, 1872, p. 1203; *British Burma Gazette*, June 28, 1873, p. 138.

Where there are more Marriage Registrars than one in any district, the Local Government shall appoint one of them to be the Senior Marriage Registrar.

Senior Marriage Registrar.

When there is only one Marriage Registrar in a district, and such Registrar is absent from such district, or ill, or when his office is temporarily vacant, the Magistrate of the District shall act as, and be, Marriage Registrar thereof during such absence, illness, or temporary vacancy.

Magistrate when to be Marriage Registrar.

8. The Governor-General in Council may, by notification in the *Gazette of India*, appoint any Christian, either by name or as holding any office for the time being, to be a Marriage Registrar in respect of any district or place within the territories of any Native Prince or State in alliance with Her Majesty.*

Marriage Registrars in Native States.

The Governor-General in Council may, by like notification, revoke any such appointment.

9. The Local Government or (so far as regards any Native State) the Governor-General in Council* may grant a license to any Christian, either by name or as holding any office for the time being, authorizing him to grant certificates of marriage between Native Christians.

Licensing of persons to grant certificates of marriage between Native Christians.

Any such license may be revoked by the authority by which it was granted, and every such grant or revocation shall be notified in the official Gazette.

PART II.

TIME AND PLACE AT WHICH MARRIAGES MAY BE SOLEMNIZED.

10. Every marriage under this Act shall be solemnized between the hours of six in the morning and seven in the evening :

Time for solemnizing marriage.

Provided that nothing in this section shall apply to—

Exceptions.

(1)—a Clergyman of the Church of England solemnizing a marriage under a special license permitting him to do so at any hour other than between six in the morning and seven in the evening, under the hand and seal of the Anglican Bishop of the Diocese or his Commissary, or

(2)—a Clergyman of the Church of Rome solemnizing a marriage between the hours of seven in the evening and six in the morning, when he has received a general or special license in that behalf from the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is so solemnized, or from such person as the same Bishop has authorized to grant such license.

" (3)—a Clergyman of the Church of Scotland solemnizing a marriage according to the rules, rites, ceremonies, and customs of the Church of Scotland."†

11. No Clergyman of the Church of England shall solemnize a marriage in any place other than a church, " where worship is generally held according to the forms of the Church of England,"‡

Place for solemnizing marriage.

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* See *Gazette of India*, June 14, 1873, p. 550 : Aug. 9, 1873, p. 712.

† In s. 10, cl. 3 has been added by Act II. of 1891, s. 2.

‡ In s. 11 the words quoted have been inserted by Act II. of 1891, s. 3.

Act XV. of 1872.

unless there is no "such" *church within five miles' distance by the shortest road from such place, or

unless he has received a special license authorizing him to do so under the hand and seal of the Anglican Bishop of the Diocese or his Commissary.

For such special license, the Registrar of the Diocese may charge such additional fee as the said Bishop from time to time authorizes.

Fee for special license.

PART III.

MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION LICENSED UNDER THIS ACT.

12. Whenever a marriage is intended to be solemnized by a Minister of Religion licensed to solemnize marriages under this Act—

Notice of intended marriage.

one of the persons intending marriage shall give notice in writing, according to the form contained in the first schedule hereto annexed, or to the like effect, to the Minister of Religion whom he or she desires to solemnize the marriage, and shall state therein

(*a*) the name and surname, and the profession or condition, of each of the persons intending marriage,

(*b*) the dwelling place of each of them,

(*c*) the time during which each has dwelt there, and

(*d*) the church or private dwelling in which the marriage is to be solemnized:

Provided that, if either of such persons has dwelt in the place mentioned in the notice during more than one month, it may be stated therein that he or she has dwelt there one month and upwards.

13. If the persons intending marriage desire it to be solemnized in a particular church, and if the Minister of Religion to whom such notice has been delivered be entitled to officiate therein, he shall cause the notice to be affixed in some conspicuous part of such church.

Publication of such notice.

But, if he is not entitled to officiate as a Minister in such church, he shall, at his option, either return the notice to the person who delivered it to him, or deliver it to some other Minister entitled to officiate therein, who shall thereupon cause the notice to be affixed as aforesaid.

Return or transfer of notice.

14. If it be intended that the marriage shall be solemnized in a private dwelling, the Minister of Religion, on receiving the notice prescribed in section twelve, shall forward it to the Marriage Registrar of the District, who shall affix the same to some conspicuous place in his own office.

Notice of intended marriage in private dwelling.

15. When one of the persons intending marriage is a minor, † every Minister receiving such notice shall, unless within twenty-four hours after its receipt he returns the same under the provisions of section thirteen, send

Sending copy of notice to Marriage Registrar when one party is a minor.

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* The words "such" has been inserted by Act II. of 1891, s. 3.

† See Act IX. of 1875.

by the post or otherwise a copy of such notice to the Marriage Registrar of the District, or, if there be more than one Registrar of such district, to the Senior Marriage Registrar. Act XV. of 1872.

16. The Marriage Registrar or Senior Marriage Registrar, as the case may be, on receiving any such notice, shall affix it to some conspicuous place in his own office, and the latter shall further cause a copy of the said notice to be sent to each of the other Marriage Registrars in the same district, who shall likewise publish the same in the manner above directed.

Procedure on receipt of notice.

17. Any Minister of Religion consenting or intending to solemnize any such marriage as aforesaid, shall, on being required so to do by or on behalf of the person by whom the notice was given, and upon one of the persons intending marriage making the declaration hereinafter required, issue under his hand a certificate of such notice having been given and of such declaration having been made :

Issue of certificate of notice given and declaration made.

Proviso. Provided—

(1) that no such certificate shall be issued until the expiration of four days after the date of the receipt of the notice by such Minister ;

(2) that no lawful impediment be shown to his satisfaction why such certificate should not issue ; and

(3) that the issue of such certificate has not been forbidden, in manner hereinafter* mentioned, by any person authorized in that behalf.

18. The certificate mentioned in section seventeen shall not be issued until one of the persons intending marriage has appeared personally before the Minister and made a solemn declaration—

Declaration before issue of certificate.

(*a*) that he or she believes that there is not any impediment of kindred or affinity, or other lawful hindrance, to the said marriage,

and, when either or both of the parties is or are a minor or minors,

(*b*) that the consent or consents required by law† has or have been obtained thereto, or that there is no person resident in India having authority to give such consent, as the case may be.

19. The father, if living, of any minor, or, if the father be dead, the guardian of the person of such minor, and, in case there be no such guardian, then the mother of such minor, may give consent to the minor's marriage,

Consent of father, or guardian, or mother.

and such consent is hereby required for the same marriage, unless no person authorized to give such consent be resident in India.

20. Every person whose consent to a marriage is required under section nineteen is hereby authorized to prohibit the issue of the certificate by any Minister, at any time before the issue of the same, by notice in writing to such Minister, subscribed by the person so authorized with his or her name and place of abode and position with respect to either of the persons intending marriage, by reason of which he or she is so authorized as aforesaid.

Power to prohibit by notice issue of certificate.

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* See s. 20. † See s. 19.

Act XV. of 1872.

21. If any such notice be received by such Minister, he shall not issue his certificate, and shall not solemnize the said marriage, until he has examined into the matter of the said prohibition, and is satisfied that the person prohibiting the marriage has no lawful authority for such prohibition,

Procedure on receipt of notice.

or until the said notice is withdrawn by the person who gave it.

22. When either of the persons intending marriage is a minor, and the Minister is not satisfied that the consent of the person whose consent to such marriage is required by section nineteen has been obtained, such Minister shall not issue such certificate until the expiration of fourteen days after the receipt by him of the notice of marriage.

Issue of certificate in case of minority.

23. When any Native Christian about to be married takes notice of marriage to a Minister of Religion, or applies for a certificate from such Minister under section seventeen, such Minister shall, before issuing the certificate, ascertain whether such Native Christian is cognizant of the purport and effect of the said notice or certificate, as the case may be, and, if not, shall translate or cause to be translated the notice or certificate to such Native Christian into some language which he understands.

Issue of certificates to Native Christians.

24. The certificate to be issued by such Minister shall be in the form contained in the second schedule hereto annexed, or to the like effect.

Form of certificate.

25. After the issue of the certificate by the Minister, marriage may be solemnized between the persons therein described according to such form or ceremony as the Minister thinks fit to adopt:

Solemnization of marriage.

Provided that the marriage be solemnized in the presence of at least two witnesses besides the Minister.

26. Whenever a marriage is not solemnized within two months after the date of the certificate issued by such Minister as aforesaid, such certificate and all proceedings (if any) thereon shall be void,

Certificate void if marriage not solemnized within two months.

and no person shall proceed to solemnize the said marriage until new notice has been given, and a certificate thereof issued in manner aforesaid.

PART IV.

REGISTRATION OF MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION.

27. All marriages hereafter solemnized in India between persons one or both of whom professes or profess the Christian religion, except marriages solemnized under Part V. or Part VI. of this Act, shall be registered in manner hereinafter prescribed.

Marriages when to be registered.

28. Every Clergyman of the Church of England shall keep a register of marriages, and shall register therein, according to the tabular form set forth in the third schedule hereto annexed, every marriage which he solemnizes under this Act.

Registration of marriages solemnized by Clergymen of Church of England.

29. Every Clergyman of the Church of England shall send four times in every year returns in duplicate, authenticated by his signature, of the entries in the register of marriages solemnized at any place where he has any spiritual charge, to the Registrar of the Archdeaconry to which he is subject, or within the limits of which such place is situate.

Quarterly returns to Archdeaconry.

Such quarterly returns shall contain all the entries of marriages contained in the said register from the first day of January to the thirty-first day of March, from the first day of April to the thirtieth day of June, from the first day of July to the thirtieth day of September, and from the first day of October to the thirty-first day of December, of each year, respectively, and shall be sent by such Clergyman within two weeks from the expiration of each of the quarters above specified.

Contents of returns.

The said Registrar, upon receiving the said returns, shall send one copy thereof to the Secretary to the Local Government.

30. Every marriage solemnized by a Clergyman of the Church of Rome shall be registered by the person and according to the form directed in that behalf by the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is solemnized,

Registration and returns of marriages solemnized by Clergyman of Church of Rome

and such person shall forward quarterly to the Secretary to the Local Government returns of the entries of all marriages registered by him during the three months next preceding.

31. Every Clergyman of the Church of Scotland shall keep a register of marriages,

Registration and returns of marriages solemnized by Clergyman of Church of Scotland.

and shall register therein, according to the tabular form set forth in the third schedule hereto annexed, every marriage which he solemnizes under this Act,

and shall forward quarterly to the Secretary to the Local Government, through the Senior Chaplain of the Church of Scotland, returns, similar to those prescribed in section twenty-nine, of all such marriages.

32. Every marriage solemnized by any person who has received episcopal ordination, but who is not a Clergyman of the Church of England, or of the Church of Rome, or by any Minister of Religion licensed under this Act to solemnize marriages, shall, immediately after the solemnization thereof, be registered in duplicate by the person solemnizing the same; (that is to say) in a marriage-register-book to be kept by him for that purpose, according to the form contained in the fourth schedule hereto annexed, and also in a certificate attached to the marriage-register-book as a counterfoil.

Certain marriages to be registered in duplicate.

33. The entry of such marriage in both the certificate and marriage-register-book shall be signed by the person solemnizing the marriage, and also by the persons married, and shall be attested by two credible witnesses, other than the person solemnizing the marriage, present at its solemnization.

Entries of such marriages to be signed and attested.

Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage-register-book.

Act XV. of 1872.

Certificate to be forwarded to Marriage Registrar, copied, and sent to Government.

34. The person solemnizing the marriage shall forthwith separate the certificate from the marriage-register-book, and send it, within one month from the time of the solemnization, to the Marriage Registrar of the District in which the marriage was solemnized, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar,

who shall cause such certificate to be copied into a book to be kept by him for that purpose,

and shall send all the certificates which he has received during the month, with such number and signature or initials added thereto as are hereinafter required, to the Secretary to the Local Government.

Copies of certificates to be entered and numbered.

35. Such copies shall be entered in order from the beginning to the end of the said book, and shall bear both the number of the certificate as copied, and also a number to be entered by the Marriage Registrar, indicating the number of the entry of the said copy in the said book, according to the order in which he receives each certificate.

Registrar to add number of entry to certificate, and send to Government.

36. The Marriage Registrar shall also add such last-mentioned number of the entry of the copy in the book to the certificate, with his signature or initials, and shall, at the end of every month, send the same to the Secretary to the Local Government.

Registration of marriages between Native Christians under Part I. or III.

37. When any marriage between Native Christians is solemnized under Part I. or Part III. of this Act, the person solemnizing the same shall, instead of proceeding in the manner provided by sections twenty-eight to thirty-six, both inclusive, register the marriage in a separate register-book, and shall keep it safely until it is filled, or, if he leave the district in which he solemnized the marriage before the said book is filled, shall make over the same to the person succeeding to his duties in the said district.

Custody and disposal of register-book.

Whoever has the control of the book at the time when it is filled, shall send it to the Marriage Registrar of the District, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar, who shall send it to the Secretary to the Local Government, to be kept by him with the records of his office.

PART V.

MARRIAGES SOLEMNIZED BY, OR IN THE PRESENCE OF, A MARRIAGE REGISTRAR.

Notice of intended marriage before Marriage Registrar.

38. When a marriage is intended to be solemnized by, or in the presence of, a Marriage Registrar, one of the parties to such marriage shall give notice in writing, in the form contained in the first schedule hereto annexed, or to the like effect, to any Marriage Registrar of the District within which the parties have dwelt,

or, if the parties dwell in different districts, shall give the like notice to a Marriage Registrar of each district,

and shall state therein the name and surname, and the profession or condition, of each of the parties intending marriage, the dwelling-place of each of them, the time during which each has dwelt therein, and the place at which the marriage is to be solemnized :

Provided that, if either party has dwelt in the place stated in the notice for more than one month, it may be stated therein that he or she has dwelt there one month and upwards.

Publication of notice.

39. Every Marriage Registrar shall, on receiving any such notice, cause a copy thereof to be affixed in some conspicuous place in his office.

When one of the parties intending marriage is a minor, every Marriage Registrar shall, within twenty-four hours after the receipt by him of the notice of such marriage, send, by post or otherwise, a copy of such notice to each of the other Marriage Registrars (if any) in the same district, who shall likewise affix the copy in some conspicuous place in his own office.

Notice to be filed, and copy entered in Marriage Notice Book.

40. The Marriage Registrar shall file all such notices, and keep them with the records of his office,

and shall also forthwith enter a true copy of all such notices in a book to be furnished to him for that purpose by the Local Government, and to be called the "Marriage Notice Book;"

and the Marriage Notice Book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same.

Certificate of notice given, and oath made.

41. If the party by whom the notice was given requests the Marriage Registrar to issue the certificate next hereinafter mentioned, and if one of the parties intending marriage has made oath as hereinafter required, the Marriage Registrar shall issue under his hand a certificate of such notice having been given, and of such oath having been made :

Proviso.

Provided —

that no lawful impediment be shown to his satisfaction why such certificate should not issue ;

that the issue of such certificate has not been forbidden, in manner hereinafter mentioned, by any person authorized in that behalf by this Act;

that four days after the receipt of the notice have expired, and further,

that where, by such oath, it appears that one of the parties intending marriage is a minor, fourteen days after the entry of such notice have expired.

Oath before issue of certificate.

42. The certificate mentioned in section forty-one shall not be issued by any Marriage Registrar, until one of the parties intending marriage appears personally before such Marriage Registrar, and makes oath*

(*a*) that he or she believes that there is not any impediment of kindred or affinity, or other lawful hindrance, to the said marriage, and

(*b*) that both the parties have, or (where they have dwelt in the districts of different Marriage Registrars) that the party making such oath has, had their, his, or her usual place of abode within the district of such Marriage Registrar,

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* See Act I. of 1868, s. 2, cl. 17.

Act XV. of 1872.

and, where either or each of the parties is a minor,

(*c*) that the consent or consents to such marriage required by law has or have been obtained thereto, or that there is no person resident in India authorized to give such consent, as the case may be.

Petition to High Court to order certificate in less than fourteen days.

43. When one of the parties intending marriage is a minor, and both such parties are at the time resident in any of the towns of Calcutta, Madras, and Bombay, and are desirous of being married in less than fourteen days after the entry of such notice as aforesaid, they may apply by petition to a Judge of the High Court, for an order upon the Marriage Registrar to whom the notice of marriage has been given, directing him to issue his certificate before the expiration of the said fourteen days required by section forty-one.

Order on petition.

And on sufficient cause being shown, the said Judge may, in his discretion, make an order upon such Marriage Registrar, directing him to issue his certificate at any time to be mentioned in the said order before the expiration of the fourteen days so required.

And the said Marriage Registrar, on receipt of the said order, shall issue his certificate in accordance therewith.

Consent of father or guardian.

44. The provisions of section nineteen apply to every marriage under this Part, either of the parties to which is a minor;

Protest against issue of certificate.

and any person whose consent to such marriage would be required thereunder may enter a protest against the issue of the Marriage Registrar's certificate, by writing, at any time before the issue of such certificate, the word "forbidden" opposite to the entry of the notice of such intended marriage in the Marriage Notice Book, and by subscribing thereto his or her name and place of abode, and his or her position with respect to either of the parties, by reason of which he or she is so authorized.

Effect of protest.

When such protest has been entered, no certificate shall issue until the Marriage Registrar has examined into matter of the protest, and is satisfied that it ought not to obstruct the issue of the certificate for the said marriage, or until the protest be withdrawn by the person who entered it.

Petition where person whose consent is necessary is insane,

45. If any person whose consent is necessary to any marriage under this Part is of unsound mind,

or unjustly withholds consent.

or if any such person (other than the father) without just cause withholds his consent to the marriage,

the parties intending marriage may apply by petition, where the person whose consent is necessary is resident within any of the towns of Calcutta, Madras, and Bombay, to a Judge of the High Court, or if he is not resident within any of the said towns then to the District Judge;

Procedure on petition.

And the said Judge of the High Court, or District Judge, as the case may be, may examine the allegations of the petition in a summary way;

And if upon examination such marriage appears proper, such Judge of the High Court or District Judge, as the case may be, shall declare the marriage to be a proper marriage. Act XV. of 1872.

Such declaration shall be as effectual as if the person whose consent was needed had consented to the marriage ;

and if he has forbidden the issue of the Marriage Registrar's certificate, such certificate shall be issued, and the like proceedings may be had under this Part in relation to the marriage as if the issue of such certificate had not been forbidden.

46. Whenever a Marriage Registrar refuses to issue a certificate under this Part, either of the parties intending marriage may apply by petition, where the district of such Registrar is within any of the towns of Calcutta, Madras, and Bombay, to a Judge of the High Court, or if such district is not within any of the said towns, then to the District Judge :

Petition when Marriage Registrar refuses certificate.

The said Judge of the High Court, or District Judge, as the case may be, may examine the allegations of the petition in a summary way, and shall decide thereon :

Procedure on petition.

The decision of such Judge of the High Court or District Judge, as the case may be, shall be final, and the Marriage Registrar to whom the application for the issue of a certificate was originally made shall proceed in accordance therewith.

47. Whenever a Marriage Registrar resident in any Native State refuses to issue his certificate, either of the parties intending marriage may apply by petition to the Governor-General in Council, who shall decide thereon.

Petition when Marriage Registrar in Native State refuses certificate.

Such decision shall be final, and the Marriage Registrar to whom the application was originally made shall proceed in accordance therewith.

48. Whenever a Marriage Registrar, acting under the provisions of section forty-four, is not satisfied that the person forbidding the issue of the certificate is authorized by law so to do, the said Marriage Registrar shall apply by petition, where his district is within any of the towns of Calcutta, Madras, and Bombay, to a Judge of the High Court, or if such district be not within any of the said towns, then to the District Judge :

Petition when Registrar doubts authority of person forbidding.

The said petition shall state all the circumstances of the case, and pray for the order and direction of the Court concerning the same,

Procedure on petition.

and the said Judge of the High Court or District Judge, as the case may be, shall examine into the allegations of the petition and the circumstances of the case,

and if, upon such examination, it appears that the person forbidding the issue of such certificate is not authorized by law so to do, such Judge of the High Court or District Judge, as the case may be, shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid,

and thereupon such certificate shall be issued, and the like proceedings may be had in relation to such marriage, as if the issue had not been forbidden.

Act XV. of 1872.

Reference when Marriage Registrar in Native State doubts authority of person forbidding.

Whenever a Marriage Registrar appointed under section eight to act within any Native State is not satisfied that the person forbidding the issue of the certificate is authorized by law so to do, the said Marriage Registrar shall send a statement of all the circumstances of the case, together with all documents relating thereto, to the Governor-General in Council.

Procedure on reference.

If it appears to the Governor-General in Council that the person forbidding the issue of such certificate is not authorized by law so to do, the Governor-General in Council shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid,

and thereupon such certificate shall be issued, and the like proceedings may be had in relation to such marriage, as if the issue of the certificate had not been forbidden.

Liability for frivolous protest against issue of certificate.

49. Every person entering a protest with the Marriage Registrar, under this Part, against the issue of any certificate, on grounds which such Marriage Registrar, under section forty-four, or a Judge of the High Court or the District Judge, under section forty-five or forty-six, declares to be frivolous and such as ought not to obstruct the issue of the certificate, shall be liable for the costs of all proceedings in relation thereto and for damages, to be recovered by suit by the person against whose marriage such protest was entered.

Form of certificate.

50 The certificate to be issued by the Marriage Registrar under the provisions of section forty-one shall be in the form contained in the second schedule to this Act annexed or to the like effect;

and the Local Government shall furnish to every Marriage Registrar a sufficient number of forms of certificate.

Solemnization of marriage after issue of certificate.

51. After the issue of the certificate of the Marriage Registrar,

or, where notice is required to be given under this Act to the Marriage Registrars for different districts, after the issue of the certificates of the Marriage Registrars for such districts,

marriage may, if there be no lawful impediment to the marriage of the parties described in such certificate or certificates, be solemnized between them, according to such form and ceremony as they think fit to adopt.

But every such marriage shall be solemnized in the presence of some Marriage Registrar (to whom shall be delivered such certificate or certificates as aforesaid), and of two or more credible witnesses besides the Marriage Registrar.

And in some part of the ceremony each of the parties shall declare as follows, or to the like effect—

"I do solemnly declare that I know not of any lawful impediment why I, *A. B.*, may not be joined in matrimony to *C. D.*"

And each of the parties shall say to the other as follows, or to the like effect—"I call upon these persons here present to witness that I, *A. B.*, do take thee, *C. D.*, to be my lawful wedded wife [*or* husband]."

52. Whenever a marriage is not solemnized within two months after the copy of the notice has been entered by the Marriage Registrar, as required by section forty, the notice and the certificate, if any, issued thereupon, and all other proceedings thereupon, shall be void ;

When marriage not had within two months after notice, new notice required.

and no person shall proceed to solemnize the marriage, nor shall any Marriage Registrar enter the same, until new notice has been given, and entry made, and certificate thereof given, at the time and in the manner aforesaid.

52. A Marriage Registrar before whom any marriage is solemnized under this Part may ask of the persons to be married the several particulars required to be registered touching such marriage.

Marriage Registrar may ask for particulars to be registered.

54. After the solemnization of any marriage under this Part, the Marriage Registrar present at such solemnization shall forthwith register the marriage in duplicate ; that is to say, in a marriage-register-book, according to the form of the fourth schedule hereto annexed, and also in a certificate attached to the marriage-register-book as a counterfoil.

Registration of marriages solemnized under Part V.

The entry of such marriage in both the certificate and the marriage-register-book shall be signed by the person by or before whom the marriage has been solemnized, if there be any such person, and by the Marriage Registrar present at such marriage, whether or not it is solemnized by him, and also by the parties married, and attested by two credible witnesses other than the Marriage Registrar and person solemnizing the marriage.

Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage-register-book.

55. The Marriage Registrar shall forthwith separate the certificate from the marriage-register-book, and send it, at the end of every month, to the Secretary to the Local Government.

Certificates to be sent monthly to Secretary to Government.

The Marriage Registrar shall keep safely the said register-book until it is filled, and shall then send it to the Secretary to the Local Government, to be kept by him with the records of his office.

Custody of register-book.

56. The Marriage Registrars in Native States shall send the certificates mentioned in section fifty-four to such officers as the Governor-General in Council from time to time, by notification in the *Gazette of India*, appoints in this behalf.*

Officers to whom Registrars in Native States shall send certificates.

57. When any Native Christian about to be married gives a notice of marriage, or applies for a certificate from a Marriage Registrar, such Marriage Registrar shall ascertain whether the said Native Christian understands the English language, and, if he does not, the Marriage Registrar shall translate, or cause to be translated, such notice or certificate, or both of them, as the case may be, to such Native Christian into a language which he understands ;

Registrars to ascertain that notice and certificate are understood by Native Christians.

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* As to the Central India Agency, see *Gazette of India*, 14th June 1873, p. 560 ; as to the Rájputáná Agency, *ibid*, 9 Aug. 1873, p. 712.

Act XV. of 1872.

or the Marriage Registrar shall otherwise ascertain whether the Native Christian is cognizant of the purport and effect of the said notice and certificate.

Native Christians to be made to understand declarations.

58. When any Native Christian is married under the provisions of this Part, the person solemnizing the marriage shall ascertain whether such Native Christian understands the English language, and, if he does not, the person solemnizing the marriage shall, at the time of the solemnization, translate, or cause to be translated, to such Native Christian, into a language which he understands, the declarations made at such marriage in accordance with the provisions of this Act.

Registration of marriages between Native Christians.

59. The registration of marriages between Native Christians under this Part shall be made in conformity with the rules laid down in section thirty-seven (so far as they are applicable), and not otherwise.

PART VI.

MARRIAGE OF NATIVE CHRISTIANS.

On what conditions marriages of Native Christians may be certified.

60. Every marriage between Native Christians applying for a certificate, shall, without the preliminary notice required under Part III., be certified under this Part, if the following conditions be fulfilled, and not otherwise :—

(1.) The age of the man intending to be married shall exceed sixteen years, and the age of the woman intending to be married shall exceed thirteen years :

(2) Neither of the persons intending to be married shall have a wife or husband still living :

(3.) In the presence of a person licensed under section nine, and of at least two credible witnesses other than such person, each of the parties shall say to the other—

"I call upon these persons here present to witness that I, *A. B.*, in the presence of Almighty God, and in the name of our Lord Jesus Christ, do take thee, *C. D.*, to be my lawful wedded wife [*or* husband]," or words to the like effect :

Provided that no marriage shall be certified under this Part when either of the parties intending to be married has not completed his or her eighteenth year, unless such consent as is mentioned in section nineteen has been given to the intended marriage, or unless it appears that there is no person living authorized to give such consent.

Grant of certificate.

61. When, in respect to any marriage solemnized under this Part, the conditions prescribed in section sixty have been fulfilled, the person licensed as aforesaid, in whose presence the said declaration has been made, shall, on the application of either of the parties to such marriage, and, on the payment of a fee of four annas, grant a certificate of the marriage.

The certificate shall be signed by such licensed person, and shall be received in any suit touching the validity of such marriage as conclusive proof of its having been performed.

Keeping of register-book and deposit of extracts therefrom with Registrar-General.

62.* (*1*) Every person licensed under section 9 shall keep in English, or in the vernacular language in ordinary use in the district or State in which the marriage was solemnized, and in such form as the Local Government by which he was licensed may from time to time prescribe, a register-book of all marriages solemnized under this Part in his presence, and shall deposit in the office of the Registrar-General of Births, Deaths, and Marriages for the territories under the administration of the said Local Government, in such form and at such intervals as that Government may prescribe, true and duly authenticated extracts from his register-book of all entries made therein since the last of those intervals.

(*2*) Where the person keeping the register-book was licensed as regards a Native State by the Governor-General in Council, references in sub-section (*1*) to the Local Government therein mentioned shall be read as references to the Local Government, to whose Registrar-General of Births, Deaths, and Marriages certified copies of entries in registers of births and deaths are for the time being required to be sent under section 24, sub-section (*2*), of the Births, Deaths, and Marriages Registration Act, 1886.

Searches in register-book and copies of entries.

63. Every person licensed under this Act to grant certificates of marriage, and keeping a marriage-register-book under section sixty-two, shall, at all reasonable times, allow search to be made in such book, and shall, on payment of the proper fee, give a copy, certified under his hand, of any entry therein.

Books in which marriages of Native Christians under Part I. or III. are registered.

64. The provisions of section sixty-two and sixty-three, as to the form of the register-book, deposting extracts therefrom, allowing searches thereof, and giving copies of the entries therein, shall, *mutatis mutandis*, apply to the books kept under section thirty-seven.

Part IV. not to apply to Roman Catholics.

65. This Part of this Act, except so much of sections sixty-two and sixty-three as are referred to in section sixty-four, shall not apply to marriages between Roman Catholics.

Saving of certain marriages.

But nothing herein contained shall invalidate any marriage celebrated between Roman Catholics under the provisions of Part V. of Act No. XXV. of 1864, previous to the twenty-third day of February 1865.

PART VII.

PENALTIES.

False oath, declaration, notice, or certificate for procuring marriage.

66.† Whoever, for the purpose of procuring a marriage or license of marriage, intentionally,—

(*a*) where an oath or declaration is required by this Act, or by any rule or custom of a Church according to the rites and ceremonies of which a marriage is intended to be solemnized, such Church being the Church of England or of Scotland or of Rome, makes a false oath or declaration, or,

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* S. 62 has been substituted by Act II. of 1891, s. 4.
† S. 66 has been substituted by Act II. of 1891, s. 5.

Act XV. of 1872.

(*b*) where a notice or certificate is required by this Act, signs a false notice or certificate,

shall be deemed to have committed the offence punishable under section 193 of the Indian Penal Code with imprisonment of either description for a term which may extend to three years and, at the discretion of the Court, with fine.

Forbidding, by false personation, issue of certificate by Marriage Registrar;

67. Whoever forbids the issue, by a Marriage Registrar, of a certificate, by falsely representing himself to be a person whose consent to the marriage is required by law, knowing or believing such representation to be false, or not having reason to believe it to be true, shall be deemed guilty of the offence described in section two hundred and five of the Indian Penal Code.

Solemnizing marriage without due authority.

68.* Whoever, not being authorized by section 5 of this Act to solemnize marriages, solemnizes or professes to solemnize, in the absence of a Marriage Registrar of the district in which the ceremony takes place, a marriage between persons one or both of whom is or are a Christian or Christians, shall be punished with imprisonment which may extend to ten years, or (in lieu of a sentence of imprisonment for seven years or upwards) with transportation for a term of not less than seven years, and not exceeding ten years,

or, if the offender is an European or American, with penal servitude according to the provisions of Act XXIV. of 1855 (*to substitute penal servitude for the punishment of transportation in respect of European and American convicts*),†

and shall be liable to fine.

Solemnizing marriage out of proper time, or without witnesses;

69. Whoever knowingly and wilfully solemnizes a marriage between persons, one or both of whom is or are a Christian or Christians, at any time other than between the hours of six in the morning and seven in the evening, or in the absence of at least two credible witnesses other than the person solemnizing the marriage, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

Saving of marriages solemnized under special license;

This section does not apply to marriages solemnized under special licenses granted by the Anglican Bishop of the Diocese or by his Commissary, nor to marriages performed between the hours of seven in the evening and six in the morning by a Clergyman of the Church of Rome, when he has received the general or special license in that behalf mentioned in section 10.

Nor does this section apply to marriages solemnized by a Clergyman of the Church of Scotland according to the rules, rites, ceremonies, and customs of the Church of Scotland.‡

Solemnizing, without notice or within fourteen days after notice, marriage with minor;

70. Any Minister of Religion licensed to solemnize marriages under this Act, who, without a notice in writing, or, when one of the parties to the marriage is a minor, and the required consent of the parents or guardians to such marriage has not been obtained, within fourteen days

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* S. 68 has been substituted by Act II. of 1891, s. 6.

† In s. 68, as amended by Act II. of 1891, certain words, repealed by Act XII. of 1891, Sch. I., have been omitted.

‡ In s. 69, the last para. has been added by Act II. of 1891, s. 7.

after the receipt by him of notice of such marriage, knowingly and wilfully solemnizes a marriage under Part III., shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine. Act XV. of 1872.

Issuing certificate, or marrying, without publication of notice;

71. A Marriage Registrar under this Act, who commits any of the following offences:—

(1) knowingly and wilfully issues any certificate for marriage, or solemnizes any marriage, without publishing the notice of such marriage as directed by this Act;

(2) after the expiration of two months after the copy of the notice has been entered as required by section 40 in respect of any marriage, solemnizes such marriage; *

solemnizing marriage with minor within fourteen days, without authority of Court, or without sending copy of notice;

(3) solemnizes, without an order of a competent Court authorizing him to do so, any marriage, when one of the parties is a minor, before the expiration of fourteen days after the receipt of the notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Senior Marriage Registrar of the District if there be more Marriage Registrars of the District than one, and if he himself be not the Senior Marriage Registrar;

issuing certificate against authorized prohibition;

(4) issues any certificate the issue of which has been prohibited, as in this Act provided, by any person authorized to prohibit the issue thereof,

shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

Issuing certificate after expiry of notice, or, in case of minor, within fourteen days after notice, or against authorized prohibition.

72. Any Marriage Registrar knowingly and wilfully issuing any certificate for marriage after the expiration of "two"† months after the notice has been entered by him as aforesaid,

or knowingly and wilfully issuing, without the order of a competent Court authorizing him so to do, any certificate for marriage, where one of the parties intending marriage is a minor, before the expiration of fourteen days after the entry of such notice, or any certificate the issue of which has been forbidden as aforesaid by any person authorized in this behalf,

shall be deemed to have committed an offence under section one hundred and sixty-six of the Indian Penal Code.

Persons authorized to solemnize marriage (other than Clergy of Churches of England, Scotland, or Rome;

73. Whoever, being authorized under this Act to solemnize a marriage,

and not being a Clergyman of the Church of England, solemnizing a marriage after due publication of banns, or under a license from the Anglican Bishop of the Diocese or a Surrogate duly authorized in that behalf,

or, not being a Clergyman of the Church of Scotland, solemnizing a marriage according to the rules, rites, ceremonies, and customs of that Church,

or, not being a Clergyman of the Church of Rome, solemnizing a marriage according to the rites, rules, ceremonies, and customs of that Church,

* In s. 71, cl. 2 has been substituted by Act II. of 1891, s. 8.

† In s. 72 the word "two" has been substituted for the word "three" by Act II. of 1891, s. 8.

Act XV. of 1872.

knowingly and wilfully issues any certificate for marriage under this Act, or solemnizes any marriage between such persons as aforesaid, without publishing, or causing to be affixed, the notice of such marriage as directed in Part III. of this Act, or after the expiration of two months after the certificate has been issued by him;

issuing certificate, or marrying, without publishing notice, or after expiry of certificate;

or knowingly and wilfully issues any certificate for marriage, or solemnizes a marriage between such persons when one of the persons intending marriage is a minor, before the expiration of fourteen days after the receipt of notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Marriage Registrar, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar of the District;

issuing certificate for, or solemnizing, marriage with minor, within fourteen days after notice;

or knowingly and wilfully issues any certificate the issue of which has been forbidden, under this Act, by any person authorized to forbid the issue;

issuing certificate authorizedly forbidden:

or knowingly and wilfully solemnizes any marriage forbidden by any person authorized to forbid the same,

solemnizing marriage authorizedly forbidden.

shall be punished with imprisonment for a term which may extend to four years, and shall also be liable to fine.

74. Whoever, not being licensed to grant a certificate of marriage under Part VI. of this Act, grants such certificate, intending thereby to make it appear that he is so licensed, shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

Unlicensed person granting certificate pretending to be licensed.

"Whoever, being licensed to grant certificates of marriage under Part VI. of this Act, without just cause refuses, or wilfully neglects or omits, to perform any of the duties imposed upon him by that Part, shall be punished with fine which may extend to one hundred rupees."*

75. Whoever, by himself or another, wilfully destroys or injures any register-book or the counterfoil certificates thereof, or any part thereof, or any authenticated extract therefrom,

Destroying or falsifying register-books.

or falsely makes or counterfeits any part of such register-book or counterfoil certificates,

or wilfully inserts any false entry in any such register-book or counterfoil certificate or authenticated extract,

shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

76. The prosecution for every offence punishable under this Act shall be commenced within two years after the offence is committed.

Limitation of prosecutions under Act.

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* In s. 74, the second para. has been added by Act II. of 1891, s. 9.

PART VIII.

MISCELLANEOUS.

What matters need not be proved in respect of marriage in accordance with Act.

77. Whenever any marriage has been solemnized in accordance with the provisions of sections four and five, it shall not be void merely on account of any irregularity in respect of any of the following matters, namely :—

(1.)—Any statement made in regard to the dwelling of the persons married, or to the consent of any person whose consent to such marriage is required by law:

(2.)—The notice of the marriage:

(3.)—The certificate or translation thereof:

(4.)—The time and place at which the marriage has been solemnized:

(5.)—The registration of the marriage.

Corrections of errors.

78. Every person charged with the duty of registering any marriage, who discovers any error in the form or substance of any such entry, may, within one month next after the discovery of such error, in the presence of the persons married, or, in case of their death or absence, in the presence of two other credible witnesses, correct the error by entry in the margin without any alteration of the original entry, and shall sign the marginal entry, and add thereto the date of such correction, and such person shall make the like marginal entry in the certificate thereof.

And every entry made under this section shall be attested by the witnesses in whose presence it was made.

And in case such certificate has been already sent to the Secretary to the Local Government, such person shall make and send in like manner a separate certificate of the original erroneous entry, and of the marginal correction therein made.

Searches and copies of entries.

79. Every person solemnizing a marriage under this Act, and hereby required to register the same,

and every Marriage Registrar or Secretary to a Local Government having the custody for the time being of any register of marriages, or of any certificate or duplicate or copies of certificate under this Act,

shall, on payment of the proper fees, at all reasonable times, allow searches to be made in such register, or for such certificate or duplicate or copies, and give a copy under his hand of any entry in the same.

Certified copy of entry in marriage-register, &c., to be evidence.

80. Every certified copy, purporting to be signed by the person entrusted under this Act with the custody of any marriage-register or certificate, or duplicate, required to be kept or delivered under this Act, of any entry of a marriage in such register or of any such certificate or duplicate, shall be received as evidence of the marriage purporting to be so entered, or of the facts purporting to be so certified therein, without further proof of such register or certificate or duplicate, or of any entry therein, respectively, or of such copy.

Sending certificates of certain marriages to Secretary of State for India.

81. The Secretary to the Local Government and the officers appointed under section fifty-six shall, at the end of every quarter in each year, select from the certificates of marriages forwarded to them respectively during such

Act XV. of 1872.

quarter, the certificates of the marriages of which the Governor-General in Council may desire that evidence shall be transmitted to England,

and shall send the same certificates, signed by them respectively, to the Secretary to the Government of India in the Home Department, for the purpose of being forwarded to the Secretary of State for India and delivered to the Registrar-General of Births, Deaths, and Marriages:

Provided that, in the case of the Governments of Madras and Bombay, the said certificates shall be forwarded by such Governments respectively directly to the Secretary of State for India.

Local Government to prescribe fees.

82. Fees shall be chargeable under this Act for—

receiving and publishing notices of marriages;

issuing certificates of marriage by Marriage Registrars, and registering marriages by the same;

entering protests against, or prohibitions of, the issue of marriage certificates by the said Registrars;

searching register-books or certificates or duplicates or copies thereof;

giving copies of entries in the same under sections sixty-three and seventy-nine.

The Local Government shall fix the amount of such fees respectively,*

and may from time to time vary or remit them, either generally or in special cases, as to it may seem fit.

Power to make rules.

83. The Local Government may make rules in regard to the disposal of the fees mentioned in section eighty-two, the supply of register books, and the preparation and submission of returns of marriages solemnized under this Act.†

Power to prescribe fees and rules for Native States.

84. The powers conferred on the Local Government by sections eighty-two and eighty-three may, so far as regards Native States, be exercised by the Governor-General in Council.‡

Power to declare who shall be District Judge.

85. The Local Government may, by notification in the official Gazette, declare who shall, in any place to which this Act applies, be deemed to be the District Judge.§

Power to delegate functions under this Act of Governor-General in Council.

86. The powers and functions given by this Act to the Governor-General in Council may be delegated to, and exercised by, such officers as the Governor-General in Council from time to time appoints in this behalf.‖

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* *Bombay Government Gazette*, 1873, p. 337: *N.-W. Provinces Gazette*, 1872, p. 1088: *Panjáb Gazette*, 1873, p. 74: *British Burma Gazette*, 1875, Pt. II., p. 133.

† *Fort St. George Gazette*, 1874, pp. 501, 613.

‡ *Gazette of India*, 18th October 1873, p. 902.

§ *Bombay Government Gazette*, April 10, 1873, p. 337: *N.-W. Provinces Gazette*, Sep. 21, 1872, p. 1088: *Panjáb Gazette*, 1873, p. 74.

‖ *Gazette of India*, Aug. 9, 1873, p. 712: *ibid.* June 14, 1876, p. 560.

And all such powers and functions may be exercised, as regards Native States "situate within or bordering on"* the Presidencies of Fort Saint George and Bombay, by the Governors in Council of those Presidencies respectively.† Act XV. of 1872.

Saving of Consular marriages.

87. Nothing in this Act applies to any marriage performed by any Minister, Consul, or Consular Agent between subjects of the State which he represents and according to the laws of such State.

Non-validation of marriages within prohibited degrees.

88. Nothing in this Act shall be deemed to validate any marriage which the personal law applicable to either of the parties forbids him or her to enter into.

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* In s. 86 the words quoted have been substituted for the words "situate within the local limits of" by Act II. of 1891, s. 10.

† *Bombay Government Gazette*, 1874, p. 996.

Act XV. of 1872.

SCHEDULE I.

(See sections 12 and 38.)

NOTICE OF MARRIAGE.

To a Minister [*or* Registrar] of

I hereby give you notice that a marriage is intended to be had, within three calendar months from the date hereof, between me and the other party herein named and described (that is to say) :—

Names.	Condition.	Rank or profession.	Age.	Dwelling place.	Length of residence.	Church, chapel, or place of worship in which the marriage is to be solemnized.	District in which the other party resides, when the parties dwell in different districts.
James Smith.	*Widower.*	*Carpenter.*	*Of full age.*	*16, Clive Street.*	*23 days.*	*Free Church of Scotland Church, Calcutta.*	
Martha Green.	*Spinster.*	.....	*Minor.*	*20, Hastings' Street.*	*More than a month.*		

Witness my hand, this day of *seventy-two.*

(Signed) *JAMES SMITH.*

[The *italics* in this schedule are to be filled up, as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another district.]

SCHEDULE II.

Act XV. of 1872.

(See sections 24 and 50.)

CERTIFICATE OF RECEIPT OF NOTICE.

I,

do hereby certify that, on the day of , notice was duly entered in my Marriage Notice Book of the marriage intended between the parties therein named and described, delivered under the hand of one of the parties (that is to say):—

Names.	Condition.	Rank or profession.	Age.	Dwelling place.	Length of residence.	Church, chapel, or place of worship in which the marriage is to be solemnized.	District in which the other party resides, when the parties dwell in different districts.
James Smith.	*Widower.*	*Carpenter.*	*Of full age.*	*16, Clive Street.*	*23 days.*	*Free Church of Scotland Church, Calcutta.*	
Martha Green.	*Spinster.*	.....	*Minor.*	*20, Hastings' Street.*	*More than a month.*		

and that the declaration required by section seventeen [*or* forty-one] of "The Indian Christian Marriage Act, 1872" has been duly made by the said (*James Smith*).

Date of notice entered } The issue of this certificate has not been prohibited
Date of certificate given } by any person authorized to forbid the issue thereof.

Witness my hand, this day of *seventy-two.*

(Signed)

This certificate will be void, unless the marriage is solemnized on or before the day of .

[The *italics* in the schedule are to be filled up, as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another district.]

Act XV. of 1872.

SCHEDULE III.

*(See sections 28 and 31.)**

FORM OF REGISTER OF MARRIAGES.

Quarterly Returns
of
MARRIAGES
for

The Archdeaconry of ... { *Calcutta.* / *Madras.* / *Bombay.** }

I,———, Registrar of the Archdeaconry of { *Calcutta,* / *Madras,* / *Bombay,* } do hereby certify that the annexed are correct copies of the originals and Official Quarterly Returns of Marriage within the Archdeaconry of { *Calcutta,* / *Madras,* / *Bombay,* } as made and transmitted to me for the quarter commencing the day of ending the day of in the year of Our Lord

[*Signature of Registrar.*]

Registrar of the Archdeaconry of { *Calcutta.* / *Madras.* / *Bombay.* }

MARRIAGES solemnized at { *Allahabad.* / *Barrackpore.* / *Bareilly.* / *Calcutta, &c., &c.* }

WHEN MARRIED.			NAMES OF PARTIES.		Age.	Condition.	Rank or profession.	Residence at the time of marriage.	Father's name and surname.	By banns or license.	Signatures of the parties.	Signatures of two or more witnesses present.	Signature of the person solemnizing the marriage.
Year.	Month.	Day.	Christian.	Surname.									

* In Sch. III., for "(See section 28)" the words "(See sections 28 and 31)" have been inserted by Act XII. of 1891, Sch. II.

SCHEDULE IV.

(See sections 32 and 54.)

MARRIAGE REGISTER BOOK.

Number.	WHEN MARRIED.			NAMES OF PARTIES.		Age.	Condition.	Rank or profession.	Residence at the time of marriage.	Father's name and surname.
				Christian name.	Surname.					
	Day.	Month	Year.							
1				*James* ...	*White* ...	*26 years* ...	*Widower*...	*Carpenter*...	*Agra* ...	*William White.*
				Martha ...	*Duncan* ...	*17 years* ...	*Spinster* ...	.....	*Agra* ...	*John Duncan.*

Married in the

This marriage was solemnized between us { *James White,* / *Martha Duncan,* } in the presence of us { *John Smith.* / *John Green.* }

CERTIFICATE OF MARRIAGE.

Number.	When married.			Names of Parties.		Age.	Condition.	Rank or profession.	Residence at the time of marriage.	Father's name and surname.
	Day.	Month	Year.	Christian name.	Surname.					
1				*James* ...	*White* ...	*26 years* ...	*Widower* ...	*Carpenter* ...	*Agra* ...	*William White.*
				Martha ...	*Duncan* ...	*17 years* ...	*Spinster* ...	.....	*Agra* ...	*John Duncan.*

Married in the

This marriage was solemnized between us { *James White,* / *Martha Duncan,* } in the presence of us { *John Smith.* / *John Green.* }

SCHEDULE V.

(See section 2.)

ENACTMENTS REPEALED.

Act XVIII. of 1872.

Number and year.	Title.	Extent of repeal.
Statute 58 Geo. 3, cap. 84.	An Act to remove Doubts as to the Validity of certain Marriages had and solemnized within the British territories in India.	The whole.
Statute 14 & 15 Vic., cap. 40.	An Act for Marriages in India ...	The whole.
Act No. V. of 1852...	An Act for giving effect to the provisions of an Act of Parliament, passed in the 15th year of the reign of Her present Majesty, intituled "An Act for Marriages in India."	So much as has not been repealed.
Act No. V. of 1865...	The Indian Marriage Act, 1865...	The whole Act, except so far as it relates to the Straits Settlements.
Act No. XXII. of 1866	An Act to extend the Indian Marriage Act, 1865, to the Hyderabad Assigned Districts and the cantonments of Secunderabad, Trimungerry, and Aurungabad.	The whole.

ACT XVIII. OF 1872.

RECEIVED THE G.-G.'S ASSENT ON THE 29TH AUGUST 1872.

An Act to amend the Indian Evidence Act, 1872.

WHEREAS it is expedient to amend the Indian Evidence Act, 1872; It is hereby enacted as follows:—

Preamble.

Short title.

1. This Act may be called "The Indian Evidence Act Amendment Act;"

Amendment of Act I. of 1872, section 32, clauses 5 and 6.

2. In section 32 of the Indian Evidence Act, 1872, clauses 5 and 6, after the word "relationship," the words "by blood, marriage, or adoption" shall be inserted.

Amendment of section 41.

3. In section 41 of the same Act, lines 17, 20, and 23, after the word "judgment," the words "order or decree" shall be inserted.

Amendment of section 45.

4. In section 45 of the same Act, line 5, after the word "art" the words "or in questions as to identity of handwriting" shall be inserted.

Amendment of section 57.

5. In section 57 of the same Act, paragraph 13, after the word "road," the words "on land or at sea" shall be inserted.

Amendment of section 66.

6. In section 66 of the same Act, line 5, after the word "is," the words "or to his attorney or pleader" shall be inserted.

Amendment of section 91.

7. In section 91 of the same Act, Exception 2, for the words "under the Indian Succession Act," the words "admitted to probate in British India," shall be substituted.

8. [*Repealed by Act XII. of 1876.*]

Amendment of section 108.

9. In section 108 of the same Act, line 1, for the word "When," the words "Provided that when" shall be substituted; and, in the last line, for the word "on," the words "shifted to" shall be substituted.

Amendment of sections 126 and 128.

10. In section 126 of the same Act, line 22, and in section 128 of the same Act, line 6, after the word "Barrister," the word "pleader" shall be inserted.

In section 126 of the same Act, line 15, for the word "criminal," the word "illegal" shall be substituted.

Amendment of section 155.

11. In section 155 of the same Act, paragraph 2, for the word "had," the word "accepted" shall be substituted.

12. [*Repealed by Act X. of 1873.*]

ACT XIX. OF 1872.

RECEIVED THE G.-G.'S ASSENT ON THE 29TH AUGUST 1872.

An Act to amend the definition of 'Coin' contained in the Indian Penal Code.

Preamble.

WHEREAS it is expedient to amend the definition of 'coin' contained in the Indian Penal Code, section 230; It is hereby enacted as follows:—

Amendment of section 230, Act XLV. of 1860.

1. For the first paragraph of the said section, the following shall be substituted:—

"230." [*See supra, p. 402.*]

ACT XX. OF 1872.

RECEIVED THE G.-G.'S ASSENT ON THE 5TH SEPTEMBER 1872.

An Act to amend Act No. V. of 1872.

Preamble.

WHEREAS it is expedient to amend Act No. V. of 1872 (*to remove doubts as to the jurisdiction of the High Court of Bombay over the Province of Sindh*); It is hereby enacted as follows:—

Sections added to Act V. of 1872.

1. The said Act shall be construed as if the following sections were added thereto:—

"2, 3, 4." [*See supra, p. 987.*]

Act II. of 1873.

ACT II. OF 1873.*

THE BURMA FERRIES ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 21ST JANUARY 1873.

An Act for regulating Ferries in British Burma.

Preamble.

WHEREAS it is expedient to regulate the public ferries within the province of British Burma; It is hereby enacted as follows:—

I.—Preliminary.

Short title.

1. This Act may be called "The Burma Ferries Act, 1873:"

Local extent.

It extends only to the territories under the administration of the Chief Commissioner of British Burma.

[*Commencement.*] Repealed by Act XVI. of 1874, s. 1.

II.—Public Ferries.

Power to declare and establish public ferries.

2. The Chief Commissioner may declare what ferries, within any part of British Burma, shall be deemed public ferries, and the district in which, for the purposes of this Act, they shall be deemed to be situate,

and may, at any time hereafter, establish new ferries, where, in his opinion, they are needed.

and may, from time to time, change the course of any public ferry,

or discontinue any public ferry which he deems unnecessary.

Every such declaration, establishment, change, or discontinuance shall be made by notification in the local official Gazette.

Superintendence of ferries.

3. The immediate superintendence of all public ferries shall, except as hereinafter provided, be vested in the Deputy Commissioner of the district in which they are situate,

and he shall make all necessary arrangements for the supply of boats for such ferries, and for the collection of the authorized tolls leviable thereat.

Management may be vested in local municipality,

4. The Chief Commissioner may direct that any public ferry situated within the limits of a town may be managed by the officer or public body charged with the superintendence of the municipal arrangements of such town,

and proceeds paid into municipal fund.

and may further direct that all or any part of the proceeds from such ferry shall be paid into the municipal fund of such town,

and thereupon such ferry shall be managed, and such proceeds or part thereof shall be paid, accordingly.

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* Act II. of 1873 has been declared in force in Upper Burma (except the Shan States). —See Act XX. of 1885, Sch. II., Part I., *infra*. The Chief Commissioner is styled the Chief Commissioner of Burma.—See Proclamation dated Sep. 25, 1886, *Gazette of India*, 25th *idem*, Pt. I., p. 530.

Act II. of 1873.

Letting ferry-tolls by auction.

5. The tolls of any public ferry may be put up to public auction for such term not exceeding three years as may be deemed expedient by the Commissioner of the Division in which such ferry is situate, and may be let to the highest bidder.

The lessee shall conform to the rules made under this Act for the management and control of such ferry,

and may be called upon by the officer putting the tolls of the ferry up to auction to give such security for his good conduct and for the punctual payment of the rent as such officer may deem fit.

Such officer may, for sufficient reason duly recorded in writing, refuse to accept the offer of the highest bidder, and may accept any other bid, or may withdraw the tolls from auction.

Power to make rules.

6. Subject to the revision and confirmation of the Chief Commissioner, the Commissioner of each division shall have power to make rules consistent with this Act—

for the control and the management of all public ferries within his division;

for regulating the time and manner in which, and the terms on which, the tolls of such ferries may be let by auction;

for collecting the rents payable for the tolls of such ferries;

and for fixing the limits of the same:

and, when the tolls of a ferry have been let under section five, he shall have power (subject as aforesaid) to make additional rules—

for regulating the number and kinds of boats and their dimensions, and the number of crew for each boat which the lessee of the tolls will be required to keep;

the hours during which he shall be bound to ply,

and the number of passengers, carts, carriages, and animals, and the quantity of goods, that may be carried in each kind of boat at one trip;

and for the keeping of such boats continually in good condition for the safe conveyance of passengers and property.

The lessee shall make such returns of traffic as the Commissioner may from time to time require.

Private ferry not to ply within certain distance of public ferry without sanction.

7. No person shall, except with the sanction of the officer charged with the management of a public ferry, keep a ferry-boat for the purpose of plying for hire within the limits of such public ferry.

Nothing hereinbefore contained shall prevent persons plying between two places, one of which is without, and one within, the said limits, or apply to boats which the Chief Commissioner expressly exempts from the operation of this section.

III.—Tolls.

Tolls.

8. Tolls, according to such rates as are from time to time fixed by the Chief Commissioner, shall be levied on all persons, animals, and other things carried by means of any public ferry:

Provided that the Chief Commissioner may, from time to time, declare what persons, animals, or other things, shall, when employed or transmitted

on the public service, or for other sufficient reason, be exempt from payment of such tolls. Act II. of 1873.

Where the tolls of a ferry have been let under section five, any such declaration, if made after the date of the auction, shall entitle the lessee to such abatement of the rent payable in respect of the tolls as may be fixed by the Commissioner of the Division with the concurrence of the Chief Commissioner.

Table of tolls.

9. The lessee or other person authorized to collect the tolls of any public ferry shall affix a table of such tolls, legibly written or printed in the vernacular language, in some conspicuous place near the ferry,

and shall be bound to produce, on demand, a list of the tolls, signed by the Deputy Commissioner or such other officer as he appoints on this behalf.

Tolls or rents to be credited to district-fund.

10. All tolls or rents received under this Act shall, except in the cases provided for by section four, be credited to the district-fund.

IV.—Penalties.

Penalty for failing to affix, or for removing, &c., table of tolls.

11. Every lessee or other person authorized to collect the tolls of a public ferry, who neglects to affix and keep in good order and repair the table of tolls mentioned in section nine,

or who wilfully removes, alters, or defaces such table, or allows it to become illegible,

or who fails to produce, on demand, the list of the tolls mentioned in section nine,

shall be liable to fine not exceeding twenty rupees.

Penalty for taking unauthorized toll,

12. Every such lessee or other person as aforesaid asking or taking other than the lawful toll,

and for causing delay.

or without due cause delaying any person, animal, or other thing,

shall be liable to a penalty not exceeding fifty rupees.

Cancelment of lease on breach of rules.

13. In the event of any breach, by a lessee of the tolls of a ferry, of the rules for the management of such ferry made under section six,

the Deputy Commissioner may impose upon him a fine not exceeding twenty rupees,

and in that event, or in the event of repeated liability to the penalties respectively provided by sections eleven and twelve,

the Deputy Commissioner may also, with the sanction of the Commissioner of the Division, cancel the lease of the tolls of such ferry, and make other arrangements for its management during the whole or any part of the term for which the tolls were let.

Penalties on passengers offending.

14. Every person crossing at any public ferry who refuses to pay the proper toll,

Act III. of 1873.

or who, with intent of avoiding payment thereof, fraudulently or forcibly crosses any ferry-station without paying the toll,

or who obstructs any toll-collector or lessee of the tolls of a public ferry, or any of his assistants, in any way in the execution of their duty under this Act,

shall be liable to fine not exceeding fifty rupees over and above the value of the damage, if any, which he has done.

Penalty for plying within public ferry-course without license.

15. Whoever conveys for hire any passenger, animal, cart, carriage, or other vehicle, or any goods or merchandise, to or from any point within the limits assigned to each public ferry, in contravention of the provisions hereinbefore contained, shall be liable to fine not exceeding fifty rupees.

Where the tolls of such ferry have been let under the provisions hereinbefore contained, the whole or any portion of any penalty realized under this section or section fourteen may, at the discretion of the convicting Magistrate or Bench of Magistrates, be paid to the lessee.

Officers by whom offences are triable.

16. All offences against this Act shall be heard and determined by any Magistrate or Bench of Magistrates; and any Magistrate or Bench of Magistrates having summary jurisdiction under Chapter XXII. of the Code of Criminal Procedure, 1882,* shall try such offences in manner provided by that chapter.

Every Magistrate or Bench of Magistrates trying offences under this section may enquire into and assess the value of the damage (if any) done by the offender to the ferry concerned, and shall order the amount of such value to be paid by him in addition to any fine imposed upon him under this Act; and the amount so ordered to be paid shall be leviable as if it were a fine.†

ACT III. OF 1873.

THE MADRAS CIVIL COURTS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 21ST JANUARY 1873.

An Act to consolidate and amend the law relating to the Civil Courts of the Madras Presidency subordinate to the High Court.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to the Civil Courts of the Madras Presidency subordinate to the High Court; It is hereby enacted as follows:—

PART I.—PRELIMINARY.

Short title.

1. This Act may be called "The Madras Civil Courts Act, 1873:"

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* Ch. XXII. of Act X. of 1882 has been substituted in s. 16 for Ch. XVIII. of Act X. of 1872.—See Act X. of 1882, s. 3.

† See Act I. of 1868, s. 5.

Local extent.

It extends to all the territories for the time being under the government of the Governor of Fort St. George in Council, except the Tracts respectively under the jurisdiction of the Agents for Ganjam and Vizagapatam ;

Commencement.

And it shall come into force on the first day of March 1873.

2. [*Repealed by Act XII. of 1873.*]

PART II.—ESTABLISHMENT AND CONSTITUTION OF CIVIL COURTS.

Number of District Courts.

3. The number of District (heretofore designated Zila) Courts to be established or continued under this Act shall be fixed, and may from time to time be altered, by the Local Government :

Provided that no increase to the number of such Courts shall be made by such Government without the previous sanction of the Governor-General in Council.

Number of Subordinate Judges and District Munsifs.

4. The number of Subordinate Judges and District Munsifs to be appointed under this Act for each District shall be fixed, and may from time to time be altered, by the Local Government :

Provided that no addition to the number of such officers shall be made by such Government without the previous sanction of the Governor-General in Council.

Court's locality.

5. The place at which any Court under this Act shall be held may be fixed, and may, from time to time, be altered—

in the case of a District Court or a Subordinate Judge's Court—by the Local Government ;

in the case of a District Munsif's Court—by the High Court.

The places fixed for any Court under this section shall be deemed to be within the local jurisdiction of that Court.*

Appointment to vacancy in office of District Judge or Subordinate Judge.

6. Whenever the office of the Judge of a District Court (hereinafter called a 'District Judge') or of a Subordinate Judge under this Act is vacant,

or whenever the Governor-General in Council has sanctioned an addition to the number of District Judges or Subordinate Judges under the provisions of section three or section four.

the Local Government shall appoint to the office such duly qualified person as it thinks proper.

Appointment to vacancy in office of District Munsif.

7. Whenever the office of a District Munsif under this Act is vacant,

or whenever the Governor-General in Council has sanctioned an addition to the number of District Munsifs under the provisions of section four,

the High Court shall appoint to the office such person as it thinks fit :

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* This clause has been added by Act XXI. of 1885, s. 2.

Act III. of 1873.

Provided that he possesses the qualifications for the time being required by the rules in this behalf which the High Court, with the previous sanction of the Local Government, are hereby empowered to make and alter.

Publication of appointments.

Every appointment made under this section shall be published in the same manner as appointments made by the Local Government.

Annulment of appointments.

The Local Government may, for good and sufficient reason, annul any appointment made under this section.

District Court, Subordinate Judges, and District Munsifs.

8. The present Zila Courts, Principal Sadr Amins, and District Munsifs, shall be respectively the first "District Courts," "Subordinate Judges," and "District Munsifs" under this Act.

Seal of Court.

9. Every Court under this Act shall use a seal of such form and dimensions as are, for the time being, prescribed by the Local Government.

PART III.—JURISDICTION.

Local limits of jurisdiction of District Court or Subordinate Judge.

10. The Local Government shall fix, and may from time to time vary, the local limits of the jurisdiction of any District Judge or Subordinate Judge under this Act:

Local limits of jurisdiction of each of several Subordinate Judges.

Provided that, where more than one Subordinate Judge is appointed to any district, the District Judge may assign to each such Subordinate Judge the local limits of his particular jurisdiction within such district.

The present local limits of the jurisdiction of every Civil Court (other than the High Court) shall be deemed to have been fixed under this Act.

Local jurisdiction of District Munsifs.

11. The High Court shall fix, and may from time to time modify, the local jurisdiction of District Munsifs.

If the High Court assigns the same local jurisdiction to two or more District Munsifs, it shall declare which of them shall be deemed the Principal District Munsif, and the other or others shall be called Additional District Munsifs, and shall take cognizance only of such suits and applications as may, by special or general order in this behalf, be directed by the District Judge.*

Jurisdiction of District Judge or Subordinate Judge in original suits.

12. The jurisdiction of a District Judge or a Subordinate Judge extends, subject to the rules contained in the Code of Civil Procedure, to all original suits and proceedings of a civil nature.

Jurisdiction of District Munsif.

The jurisdiction of a District Munsif extends to all like suits and proceedings, not otherwise exempted from his cognizance, of which the amount or value of the subject-matter does not exceed two thousand five hundred rupees.

Appeals from decrees of District Courts.

13. Regular or special appeals † shall, when such appeals are allowed by law, lie from the decrees and orders of a District Court to the High Court.

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* In s. 11. the second clause has been added by Act XXI. of 1885, s. 3.

† In s. 13, certain words repealed by Act XII. of 1891, Sch. I., have here been omitted.

Appellate jurisdiction of District Court.

Appeals from the decrees and orders of Subordinate Judges and District Munsifs shall, when such appeals are allowed by law, lie to the District Court, except when the amount or value of the subject-matter of the suit * exceeds rupees five thousand, in which case the appeal shall lie to the High Court :

Appellate jurisdiction of Subordinate Judge.

Provided that, whenever a Subordinate Judge's Court is established in any district at a place remote from the station of the District Court, the High Court may, with the previous sanction of the Local Government, direct that appeals from the decrees or orders of District Munsifs within the local limits of the jurisdiction of such Subordinate Judge be preferred in the Court of the latter :

Disposal of appeal by District Judge.

Provided also that the District Judge may remove to his own Court, from time to time, appeals so preferred, and dispose of them himself, or may, subject to the orders of the High Court, refer any appeals from the decrees and orders of District Munsifs, preferred in the District Court, to any Subordinate Judge within the district.

Valuation of suits for immoveable property.

14. † When the subject-matter of any suit or proceeding is land, a house, or a garden, its value shall, for the purposes of the jurisdiction conferred by this Act, be fixed in manner provided by the Court-fees Act, 1870, section seven, clause 5.

Power to require witness or party to make oath or affirmation.

15. Every Court under this Act may require a witness or party to any suit or other proceeding pending in such Court to make such oath or affirmation as is prescribed by the law for the time being in force.

Law administered by Courts to natives.

16. Where, in any suit or proceeding, it is necessary for any Court under this Act to decide any question regarding succession, inheritance, marriage, or caste, or any religious usage or institution,

(*a*) the Muhammadan law in cases where the parties are Muhammadans, and the Hindu law in cases where the parties are Hindus, or

(*b*) any custom (if such there be) having the force of law, and governing the parties or property concerned,

shall form the rule of decision, unless such law or custom has, by legislative enactment, been altered or abolished.

(*c*) In cases where no specific rule exists, the Court shall act according to justice, equity, and good conscience.‡

Judges not to try suits in which they are interested;

17. No District Judge, Subordinate Judge, or District Munsif, shall try any suit to or in which he is a party or personally interested, or shall adjudicate upon any proceeding connected with, or arising out of, such suit.

nor appeals from decrees passed in other capacities.

No District Judge or Subordinate Judge shall try any appeal against a decree or order passed by himself in another capacity.

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* *I. e.*, the original suit, 7 Mad. H. C. Rep. 356.

† S. 14 is repealed in local areas to which rules under s. 3 of Act VII. of 1887 apply. —See s. 6 of that Act.

‡ This is equivalent to s. 17 of Mad. Reg. II. of 1802, as to which see 9 Moo. I. A. Cases 195 and 303.

Act III. of 1873.

When any such suit, proceeding, or appeal comes before any such officer, he shall report the circumstances to the Court to which he is immediately subordinate.

Mode of disposing of such suits and appeals.

The superior Court shall thereupon dispose of the case in the manner prescribed by the Code of Civil Procedure, section 6.*

Nothing in the last preceding clause of this section shall be deemed to affect the extraordinary original civil jurisdiction of the High Court.

PART IV.—MISCONDUCT OF JUDGES.

18. Any District Judge, Subordinate Judge, or District Munsif, may, for any misconduct, be suspended or removed by the Local Government.

Suspension of Judge by Local Government.

19. The High Court may, whenever it sees urgent necessity for so doing, suspend a Subordinate Judge pending the orders of the Local Government.

Suspension of Subordinate Judge by High Court.

The High Court shall immediately report the circumstances of such suspension,

and the Local Government shall make such order thereon as it thinks fit.

20. The High Court may suspend any District Munsif who is alleged to have misconducted himself, or may appoint as commission for enquiring into his alleged misconduct.

Suspension of District Munsif by High Court.

Commission of inquiry.

The provisions of Act No. XXXVII. of 1850 (*for regulating enquiries into the behaviour of public servants*) shall apply to enquiries under this section, the powers conferred by that Act on the Government being exercised by the High Court.

Exercise by High Court of powers conferred on Government by Act XXXVII. of 1850.

On receiving the report of the result of any such enquiry, the High Court may, if it think fit, remove the Munsif from office, or suspend him, or reduce him to a lower grade.

21. The District Judge may suspend from office, whenever he sees urgent necessity for so doing, any District Munsif under his control.

Suspension of District Munsif by District Judge.

Whenever a District Judge exercises the power conferred by this section, he shall forthwith send to the High Court a full report of the circumstances of the case, together with the evidence, if any, and the High Court shall make such order thereon as it thinks fit.

Report to High Court.

PART V.—MINISTERIAL OFFICERS.

22. The ministerial officers of the District Courts shall be appointed, and may be suspended or removed, by the Judges of such Courts, whose orders in such matters shall, "subject to the control of the High Court,"† be final.

Appointment, &c., of ministerial officers of District Courts.

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* Now see s. 25 of Act XIV. of 1882.—See s. 3 of that Act.

† In s. 22 the words quoted have been inserted by Act XXI. of 1885, s. 4.

23.* The ministerial officers of the Courts of the Subordinate Judges and District Munsifs shall be appointed by such Subordinate Judges and District Munsifs, respectively, subject to the approval or confirmation of the District Judge within whose jurisdiction such Courts are situate, and may, "subject to the control of the High Court,"† be suspended or removed from office either by the said District Judge or (subject to his approval or confirmation) by such Subordinate Judges and District Munsifs, respectively.

Appointment and removal of ministerial officers of subordinate Courts.

24. Every appointment under this Part shall be made subject to such rules as the Local Government from time to time prescribes on this behalf.

Rules regulating such appointments.

Every person appointed under this Part shall perform such duties as may from time to time be imposed upon him by the presiding officer of the Court to which he belongs.

Duties of ministerial officers.

The present ministerial officers of the Courts under this Act shall be deemed to have been appointed under this Part.

Present ministerial officers.

24A.‡ The Local Government may, at the instance of the District Judge, transfer from any Court, except the High Court, to any other Court, except the High Court, all or any of the ministerial officers of the Court of such Judge, or of any Subordinate Judge or District Munsif under his control.

Transfer of ministerial officers.

The District Judge may transfer all or any of the ministerial officers of any Court under his control to any other such Court.

PART VI.—MISCELLANEOUS.

25. In the event of the death of the District Judge,

Temporary discharge of duties of District Judge.

or of his being incapacitated by illness or otherwise for the performance of his duties,

or of his absence from the station in which his Court is held,

the senior Subordinate Judge of the District shall, without interruption to his ordinary duties, assume charge of the District Judge's office, and shall discharge such of the current duties thereof as are connected with the filing of suits and appeals, the execution of processes, and the like,

and shall continue in charge of the office until the same is resumed or assumed by an officer duly appointed thereto.

26. The District Judge, on the occurrence within his district of any vacancy in the office of District Munsif, may, pending the orders of the High Court thereon, appoint such person as he thinks fit to act in such office; and he shall at once report to the High Court the occurrence of every such vacancy and such appointment.

District Judge may nominate to vacancy in office of District Munsif.

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* S. 23 has been substituted for the original by Act XIX. of 1877, s. 2.
† In s. 23 the words quoted have been inserted by Act XXI. of 1885, s. 4.
‡ S. 24A has been added by Act XIX. of 1877, s. 3.

Act V. of 1873.

District Judge to control Civil Courts of District.

27. Subject to the other provisions of this Act and to the rules for the time being in force and prescribed by the High Court in this behalf, the general control over all the Civil Courts under this Act* in any district is vested in the District Judge.

Investiture of Subordinate Judge with Small Cause jurisdiction.

28. The Local Government may, by notification in the official Gazette, invest, within such local limits as it shall from time to time appoint,

any "District or"† Subordinate Judge with the jurisdiction of a Judge of a Court of Small Causes for the trial of suits cognizable by such Courts up to the amount of rupees five hundred,

Investiture of District Munsif with similar jurisdiction.

and any District Munsif with the same jurisdiction up to the amount of rupees fifty, "or, on the recommendation of the High Court, up to any amount not exceeding rupees two hundred,"†

and may, by like notification, whenever it thinks fit, withdraw such jurisdiction from the "District or"† Subordinate Judge or Munsif so invested.

29. [*Para. 1, repealed by Act IX. of 1887, and paras. 2 and 3 repealed by Act XII. of 1891, Sch. I.*]

30. The High Court may permit the Civil Courts under its control to adjourn from time to time for periods not exceeding in the aggregate two months in each year.

Vacation.

ACT V. OF 1873.‡

THE GOVERNMENT SAVINGS BANKS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 28TH JANUARY 1873.

An Act to amend the Law relating to Government Savings Banks.

Preamble.

WHEREAS it is expedient to amend the law relating to the payment of deposits in Government Savings Banks; It is hereby enacted as follows:—

Preliminary.

Short title.

1. This Act may be called "The Government Savings Banks Act, 1873;"

Local extent.

It extends to the whole of British India.

Commencement.

[*Repealed by Act XVI. of 1874.*]

2. [*Repealed by Act XII. of 1873.*]

Interpretation-clause.

3. In this Act—

"Depositor" means a person by whom, or on whose behalf, money has been heretofore, or shall be hereafter, deposited in a Government Savings Bank, and "deposit" means money so deposited:

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* Whether in exercise of jurisdiction as Courts of Small Causes or otherwise, 8 Mad. H. C. Rulings X.

† In s. 28 the words quoted have been inserted by Act XXI. of 1885, s. 5.

‡ Act V. of 1873 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts: The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum.—See *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504. It is included in the Schedule to the Santál Parganas Laws Regulation (III. of 1886).

"Secretary" includes every person empowered to manage a Government Savings Bank; Act V. of 1873.

and "Minor" means a person who has not completed the age of eighteen years.

Deposits belonging to the Estates of deceased Persons.

Payment on death of depositor.

4. If a depositor dies, leaving in a Government Savings Bank a sum of money not exceeding one thousand rupees,

and if probate of his will or letters of administration of his estate, or a certificate granted under Act No. XXVII. of 1860 (*for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*), is not produced to the Secretary of such Bank within three months of the death of the said depositor,

the Secretary of such Bank may pay the said sum of money to any person appearing to him to be entitled to receive it, or to administer the estate of the deceased.

Payment to be a discharge.

5. Such payment shall be a full discharge from all further liability in respect of the money so paid:

Saving of right of executor.

But nothing herein contained precludes any executor or administrator, or other representative of the deceased, from recovering from the person receiving the same the amount remaining in his hands after deducting the amount of all debts or other demands lawfully paid or discharged by him in due course of administration.

Saving of right of creditor.

And any creditor or claimant against the estate of the deceased may recover his debt or claim out of the money paid under this Act, or the said Act No. XXVI. of 1855,* to any person, and remaining in his hands unadministered, in the same manner and to the same extent as if the latter had obtained letters of administration of the estate of the deceased.

Security for due administration.

6. The Secretary of any such Bank may take such security as he thinks necessary from any person to whom he pays any money under section four for the due administration of the money so paid,

and he may assign the said security to any person interested in such administration.

Power to administer oath.

7. For the purpose of ascertaining the right of the person claiming to be entitled as aforesaid, the Secretary of any such Bank may take evidence on oath or affirmation according to the law for the time being relating to oaths and affirmations.†

Penalty for false statements.

Any person who, upon such oath or affirmation makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall be deemed guilty of an offence under section one hundred and ninety-three of the Indian Penal Code.

Deposit when excluded in computing Court Fees.

8. Where the amount of the deposit belonging to the estate of a deceased depositor does not exceed one thousand rupees, such amount shall be excluded in computing the fee

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* Repealed by this Act, s. 2.

† See Act X. of 1873, *infra*.

Act V. of 1873. chargeable, under the Court-fees Act, 1870, on the probate, or letters of administration, or certificate (if any), granted in respect of his property:*

Provided that the person claiming such probate or letters or certificate shall exhibit to the Court authorized to grant the same a certificate of the amount of the deposit in any Government Savings Bank belonging to the estate of the deceased. Such certificate shall be signed by the Secretary of such Bank, and the Court shall receive it as evidence of the said amount.

Act not to apply to deposits belonging to estates of European soldiers or deserters.

9. Nothing hereinbefore contained applies to money belonging to the estate of any European officer, non-commissioned officer, or soldier dying in Her Majesty's service in India, or of any European who, at the time of his death, was a deserter from the said service.

Deposits belonging to Minors.

Payment of deposits to minor or guardian.

10. Any deposit made by, or on behalf of, any minor, may be paid to him personally, if he made the deposit, or to his guardian for his use, if the deposit was made by any person other than the minor, together with the interest accrued thereon.

The receipt of any minor or guardian, for money paid to him under this section, shall be a sufficient discharge therefor.

Legalization of like payments heretofore made.

11. All payments of deposits heretofore made to minors or their guardians by any Secretary of a Government Savings Bank shall be deemed to have been made in accordance with law.

Deposits belonging to Lunatics.

Payment of deposits belonging to lunatics.

12. If any depositor becomes insane or otherwise incapable of managing his affairs,

and if such insanity or incapacity is proved to the satisfaction of the Secretary of the Bank in which his deposit may be,

such Secretary may, from time to time, make payments out of the deposit to any proper person,

and the receipt of such person, for money paid under this section, shall be a sufficient discharge therefor.

Where a Committee or Manager of the depositor's estate has been duly appointed, nothing in this section authorizes payments to any person other than such Committee or Manager.

Deposits made by Married Women.

Payment of married women's deposits.

13. Any deposit made by or on behalf of a married woman, or by or on behalf of a woman who afterwards marries, may be paid to her, whether or not the Indian Succession Act, 1865, section four, applies to her marriage; and her receipt for money paid to her under this section shall be a sufficient discharge therefor.

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* See 9 Geo. IV., c. 92, s. 40.

Rules.

14. All certificates under section eight, and all payments under section ten, section twelve, or section thirteen, shall be respectively granted and made by the Secretary of the Bank, subject to such rules consistent with this Act as the Governor-General in Council may, from time to time, prescribe.

Rules regulating certificates under section 8, and payments under section 10, 12, or 13.

ACT VIII. OF 1873.*

THE NORTHERN INDIA CANAL AND DRAINAGE ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 11TH FEBRUARY 1873.

An Act to regulate Irrigation, Navigation, and Drainage in Northern India.

WHEREAS, throughout the territories to which this Act extends, the Government is entitled to use and control for public purposes the water of all rivers and streams flowing in natural channels, and of all lakes and other natural collections of still water; and whereas it is expedient to amend the law relating to Irrigation, Navigation, and Drainage in the said territories; It is hereby enacted as follows:—

Preamble.

PART I.

PRELIMINARY.

1. This Act may be called "The Northern India Canal and Drainage Act, 1873:"

Short title.

It extends to the territories for the time being respectively under the government of the Lieutenant-Governors of the North-Western Provinces and the Punjáb, and under the administration of the Chief Commissioners of Oudh and the Central Provinces; and applies to all lands, whether permanently settled, temporarily settled, or free from revenue.

Local extent.

[*Commencement.*] *Repealed by Act XVI. of 1874.*

2. [*Repeal of Acts.*] *Repealed by Act XVI. of 1874.*

3. In this Act—unless there be something repugnant in the subject or context—

Interpretation-clause.

(1) "Canal"† includes—

"Canal."

(*a*) all canals, channels, and reservoirs constructed, maintained, or controlled by Government for the supply or storage of water;

(*b*) all works, embankments, structures, supply, and escape-channels connected with such canals, channels, or reservoirs;

(*c*) all water-courses as defined in the second clause of this section;

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* Act VIII. of 1873 has been extended, by notification under the Scheduled Districts Act (XIV. of 1874), to the Tarái Parganas.—See Notification No. 1554, dated September 22, 1876, published in the *Gazette of India*, 1876, Pt. I., p. 506, and in the *North-Western Provinces Gazette*, 1876, Pt. II., p. 1279.

† But see s. 74, *infra*.

Act VIII. of 1873.

(*d*) any part of a river, stream, lake, or natural collection of water, or natural drainage-channel, to which the Local Government has applied the provisions of Part II. of this Act;

(2) "Water-course" means any channel which is supplied with water from a canal, but which is not maintained at the cost of Government, and all subsidiary works belonging to any such channel;

(3) "Drainage-work" includes escape-channels from a canal, dams, weirs, embankments, sluices, groins, and other works for the protection of lands from flood or from erosion, formed or maintained by the Government under the provisions of Part VII. of this Act, but does not include works for the removal of sewage from towns;

(4) "Vessel" includes boats, rafts, timber, and other floating bodies;

(5) "Commissioner" means a Commissioner of a Division, and includes any officer appointed under this Act to exercise all or any of the powers of a Commissioner;

(6) "Collector" means the head revenue officer of a district, and includes a Deputy Commissioner or other officer appointed under this Act to exercise all or any of the powers of a Collector;

(7) "Canal-officer" means an officer appointed under this Act to exercise control or jurisdiction over a canal or any part thereof;

"Superintending Canal-officer" means an officer exercising general control over a canal or portion of a canal;

"Divisional Canal-officer" means an officer exercising control over a division of a canal;

"Sub-Divisional Canal-officer" means an officer exercising control over a sub-division of a canal;

(8) "District" means a district as fixed for revenue purposes.

Power to appoint officers

4. The Local Government may from time to time declare, by notification in the official Gazette, the officers by whom, and the local limits within which, all or any of the powers or duties hereinafter conferred or imposed shall be exercised or performed.

All officers mentioned in section three, clause (7), shall be respectively subject to the orders of such officers as the Local Government from time to time directs.

PART II.

Of the Application of Water for Public Purposes.

Notification to issue when water-supply is to be applied for public purposes.

5. Whenever it appears expedient to the Local Government that the water of any river or stream flowing in a natural channel, or of any lake or other natural collection of still water, should be applied or used by the Government for the purpose of any existing or projected canal or drainage-work,

the Local Government may, by notification in the official Gazette, declare that the said water will be so applied or used after a day to be named in the said notification, not being earlier than three months from the date thereof.

Act VIII. of 1873.

Powers of Canal-officer.

6. At any time after the day so named, any Canal-officer, acting under the orders of the Local Government in this behalf, may enter on any land, and remove any obstructions, and may close any channels, and do any other thing necessary for such application or use of the said water.

Notice as to claims for compensation.

7. As soon as is practicable after the issue of such notification, the Collector shall cause public notice to be given at convenient places, stating that the Government intends to apply or use the said water as aforesaid, and that claims for compensation in respect of the matters mentioned in section eight may be made before him.

Damage for which compensation shall not be awarded.

8. No compensation shall be awarded for any damage caused by—

(*a*) stoppage or diminution of percolation or floods;

(*b*) deterioration of climate or soil;

(*c*) stoppage of navigation, or of the means of drifting timber or watering cattle;

(*d*) displacement of labour.

Matters in respect of which compensation may be awarded.

But compensation may be awarded in respect of any of the following matters:—

(*e*) Stoppage or diminution of supply of water through any natural channel to any defined artificial channel, whether above or under ground, in use at the date of the said notification:

(*f*) Stoppage or diminution of supply of water to any work erected for purposes of profit on any channel, whether natural or artificial, in use at the date of the said notification:

(*g*) Stoppage or diminution of supply of water through any natural channel which has been used for purposes of irrigation within the five years next before the date of the said notification:

(*h*) Damage done in respect of any right to a water-course or the use of any water to which any person is entitled under the Indian Limitation Act, 1877, Part IV.:*

(*i*) Any other substantial damage, not falling under any of the above clauses (*a*), (*b*), (*c*), or (*d*), and caused by the exercise of the powers conferred by this Act, which is capable of being ascertained and estimated at the time of awarding such compensation.

In determining the amount of such compensation, regard shall be had to the diminution in the market-value, at the time of awarding compensation, of the property in respect of which compensation is claimed; and where such market-value is not ascertainable, the amount shall be reckoned at twelve times the amount of the diminution of the annual net profits of such property, caused by the exercise of the powers conferred by this Act.

No right to any such supply of water as is referred to in clause (*e*), (*f*), or (*g*) of this section, in respect of a work or channel not in use at the date of the notification, shall be acquired as against the Government, except by grant or under the Indian Limitation Act, 1877, Part IV.*

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* The references to Part IV. of Act IX. of 1871 are altered in accordance with Act XV. of 1877, s. 2.

Act VIII. of 1873.

And no right to any of the advantages referred to in clauses (*a*), (*b*), and (*c*) of this section shall be acquired, as against the Government, under the same Part.

Limitation of claims.

9. No claim for compensation for any such stoppage, diminution, or damage shall be made after the expiration of one year from such stoppage, diminution, or damage, unless the Collector is satisfied that the claimant had sufficient cause for not making the claim within such period.

Enquiry into claims and amount of compensation.

10.* The Collector shall proceed to enquire into any such claim, and to determine the amount of compensation, if any, which should be given to the claimant; and sections nine to twelve (inclusive), fourteen and fifteen, eighteen to twenty-three (inclusive), twenty-six to forty (inclusive), fifty-one, fifty-seven, fifty-eight, and fifty-nine of the Land Acquisition Act, 1870, shall apply to such enquiries:

Provided that, instead of the last clause of the said section twenty-six, the following shall be read: "The provisions of this section and of section eight of the Northern India Canal and Drainage Act, 1873, shall be read to every assessor in a language which he understands, before he gives his opinion as to the amount of compensation to be awarded."

Abatement of rent on interruption of water-supply.

11. Every tenant holding under an unexpired lease, or having a right of occupancy, who is in occupation of any land at the time when any stoppage or diminution of water-supply, in respect of which compensation is allowed under section eight, takes place, may claim an abatement of the rent previously payable by him for the said land, on the ground that the interruption reduces the value of the holding.

Enhancement of rent on restoration of water-supply.

12. If a water-supply increasing the value of such holding is afterwards restored to the said land, the rent of the tenant may be enhanced, in respect of the increased value of such land due to the restored water-supply, to an amount not exceeding that at which it stood immediately before the abatement.

Such enhancement shall be on account only of the restored water-supply, and shall not affect the liability of the tenant to enhancement of rent on any other grounds.

Compensation when due.

13. All sums of money payable for compensation under this Part shall become due three months after the claim for such compensation is made in respect of the stoppage, diminution, or damage complained of,

Interest.

and simple interest, at the rate of six per cent. per annum, shall be allowed on any sum remaining unpaid after the said three months, except where the non-payment of such sum is caused by the wilful neglect or refusal of the claimant to receive the same.

PART III.

OF THE CONSTRUCTION AND MAINTENANCE OF WORKS.

Power to enter and survey, &c.

14.† Any Canal-officer or other person acting under the general or special order of a Canal-officer,

* As to the application of s. 10 in case of claims to compensation on account of drainage-works, see s. 61, *infra*.

† As to the application of s. 14 in the case of proposed drainage-works, see s. 58, *infra*.

may enter upon any lands adjacent to any canal, or through which any canal is proposed to be made, and undertake surveys or levels thereon ; Act VIII. of 1873.

and dig and bore into the sub-soil ;

and make and set up suitable land-marks, level-marks, and water-gauges ;

and do all other acts necessary for the proper prosecution of any enquiry relating to any existing or projected canal under the charge of the said Canal-officer :

and where otherwise such enquiry cannot be completed, such officer or other person may cut down and clear away any part of any standing crop, fence, or jungle ;

Power to clear land.

and may also enter upon any land, building, or water-course on account of which any water-rate is chargeable, for the purpose of inspecting or regulating the use of the water supplied, or of measuring the lands irrigated thereby or chargeable with a water-rate, and of doing all things necessary for the proper regulation and management of such canal :

Power to inspect and regulate water-supply.

Provided that, if such Canal-officer or person proposes to enter into any building or enclosed court or garden attached to a dwelling-house not supplied with water flowing from any canal, he shall previously give the occupier of such building, court, or garden at least seven days' notice in writing of his intention to do so.

Notice of intended entry into houses.

In every case of entry under this section, the Canal-officer shall, at the time of such entry, tender compensation for any damage which may be occasioned by any proceeding under this section; and in case of dispute as to the sufficiency of the amount so tendered, he shall forthwith refer the same for decision by the Collector, and such decision shall be final.

Compensation for damage caused by entry.

15. In case of any accident happening or being apprehended to a canal, any Divisional Canal-officer, or any person acting under his general or special orders in this behalf, may enter upon any lands adjacent to such canal, and may execute all works which may be necessary for the purpose of repairing or preventing such accident.

Power to enter for repairs and to prevent accidents.

In every such case, such Canal-officer or person shall tender compensation to the proprietors or occupiers of the said lands for all damage done to the same. If such tender is not accepted, the Canal-officer shall refer the matter to the Collector, who shall proceed to award compensation for the damage as though the Local Government had directed the occupation of the lands under section forty-three of the Land Acquisition Act, 1870.

Compensation for damage to land.

16. Any persons desiring to use the water of any canal may apply in writing to the Divisional or Sub-Divisional Canal-officer of the division or sub-division of the canal from which the water-course is to be supplied, requesting such officer to construct or improve a water-course at the cost of the applicants.

Application by persons desiring to use canal-water.

The application shall state the works to be undertaken, their approximate estimated cost, or the amount which the applicants are willing to pay for the same, or whether they engage to pay the actual cost as settled by the Divisional Canal-officer, and how the payment is to be made.

Contents of application.

Act VIII. of 1873.

When the assent of the Superintending Canal-officer is given to such application, all the applicants shall, after the application has been duly attested before the Collector, be jointly and severally liable for the cost of such works to the extent mentioned therein.

Liability of applicants for cost of works.

Any amount becoming due under the terms of such application, and not paid to the Divisional Canal-officer, the person authorized by him to receive the same, on or before the date on which it becomes due, shall, on the demand of such officer, be recoverable by the Collector as if it were an arrear of land-revenue.

Recovery of amount due.

17. There shall be provided, at the cost of Government, suitable means of crossing canals constructed or maintained at the cost of Government, at such places as the Local Government thinks necessary for the reasonable convenience of the inhabitants of the adjacent lands.

Government to provide means of crossing canals.

On receiving a statement in writing, signed by not less than five of the owners of such lands, to the effect that suitable crossings have not been provided on any canal, the Collector shall cause enquiry to be made into the circumstances of the case, and, if he thinks that the statement is established, he shall report his opinion thereon for the consideration of the Local Government, and the Local Government shall cause such measures in reference thereto to be taken as it thinks proper.

18. The Divisional Canal-officer may issue an order to the persons using any water-course to construct suitable bridges, culverts, or other works for the passage of the water of such water-course across any public road, canal, or drainage-channel in use before the said water-course was made, or to repair any such works.

Persons using water-course to construct works for passing water across roads.

Such order shall specify a reasonable period within which such construction or repairs shall be completed ;

If they fail, Canal-officer may construct,

and, if, after the receipt of such order, the persons to whom it is addressed do not, within the said period, construct or repair such works to the satisfaction of the said Canal-officer, he may, with the previous approval of the Superintending Canal-officer, himself construct or repair the same :

and, if the said persons do not, when so required, pay the cost of such construction or repairs as declared by the Divisional Canal-officer, the amount shall, on the demand of the Divisional Canal-officer, be recoverable from them by the Collector as if it were an arrear of land-revenue.

and recover cost.

19. If any person, jointly responsible with others for the construction or maintenance of a water-course, or jointly making use of a water-course with others, neglects or refuses to pay his share of the cost of such construction or maintenance, or to execute his share of any work necessary for such construction or maintenance, the Divisional or Sub-divisional Canal-officer, on receiving an application in writing from any person injured by such neglect or refusal, shall serve notice on all the parties concerned that, on the expiration of a fortnight from the service, he will investigate the case ; and shall, on the expiration of that period, investigate the case accordingly, and make such order thereon as to him seems fit.

Adjustment of claims between persons jointly using water-course.

Such order shall be appealable to the Commissioner, whose order thereon shall be final. Act VIII. of 1873.

Recovery of amount found due.

Any sum directed by such order to be paid within a specified period may, if not paid within such period, and if the order remains in force, be recovered by the Collector, from the person directed to pay the same, as if it were an arrear of land-revenue.

Supply of water through intervening water-course.

20. Whenever application is made to a Divisional Canal-officer for a supply of water from a canal, and it appears to him expedient that such supply should be given, and that it should be conveyed through some existing water-course, he shall give notice to the persons responsible for the maintenance of such water-course to show cause, on a day not less than fourteen days from the date of such notice, why the said supply should not be so conveyed ; and, after making enquiry on such day, the Divisional Canal-officer shall determine whether and on what conditions the said supply shall be conveyed through such water-course.

When such officer determines that a supply of canal-water may be conveyed through any water-course as aforesaid, his decision shall, when confirmed or modified by the Superintending Canal-officer, be binding on the applicant, and also on the persons responsible for the maintenance of the said water-course.

Such applicant shall not be entitled to use such water-course until he has paid the expense of any alteration of such water-course necessary in order to his being supplied through it, and also such share of the first cost of such water-course as the Divisional or Superintending Canal-officer may determine.

Such applicant shall also be liable for his share of the cost of maintenance of such water-course so long as he uses it.

Application for construction of new water-course.

21. Any person desiring the construction of a new water-course may apply in writing to the Divisional Canal-officer, stating—

(1) that he has endeavoured unsuccessfully to acquire, from the owners of the land through which he desires such water-course to pass, a right to occupy so much of the land as will be needed for such water-course ;

(2) that he desires the said Canal-officer, in his behalf and at his cost, to do all things necessary for acquiring such right ;

(3) that he is able to defray all costs involved in acquiring such right and constructing such water-course.

Procedure of Canal-officer thereupon.

22. If the Divisional Canal-officer considers—

(1) that the construction of such water-course is expedient, and

(2) that the statements in the application are true,

he shall call upon the applicant to make such deposit as the Divisional Canal-officer considers necessary to defray the cost of the preliminary proceedings, and the amount of any compensation which he considers likely to become due under section twenty-eight ;

and, upon such deposit being made, he shall cause inquiry to be made into the most suitable alignment for the said water-course, and shall mark out the land which, in his opinion, it will be necessary to occupy for the construction thereof, and shall forthwith publish a notice in every village through which the water-course is proposed to be taken, that so much of

Act VIII of 1873.

such land as belongs to such village has been so marked out, and shall send a copy of such notice of the Collector of every district in which any part of such land is situate.

Application for transfer of existing water-course.

23. Any person desiring that an existing water-course should be transferred from its present owner to himself may apply in writing to the Divisional Canal-officer, stating—

(1) that he has endeavoured unsuccessfully to procure such transfer from the owner of such water-course;

(2) that he desires the said Canal-officer in his behalf and at his cost to do all things necessary for procuring such transfer;

(3) that he is able to defray the cost of such transfer.

Procedure thereupon.

If the Divisional Canal-officer considers—

(*a*) that the said transfer is necessary for the better management of the irrigation from such water-course, and

(*b*) that the statements in the application are true,

he shall call upon the applicant to make such deposit as the Divisional Canal-officer considers necessary to defray the cost of the preliminary proceedings, and the amount of any compensation that may become due under the provisions of section twenty-eight in respect of such transfer;

and, upon such deposit being made, he shall publish a notice of the application in every village, and shall send a copy of the notice to the Collector of every district, through which such water-course passes.

Objections to construction or transfer applied for.

24. Within thirty days from the publication of a notice under section twenty-two or section twenty-three, as the case may be, any person interested in the land or water-course to which the notice refers may apply to the Collector by petition, stating his objection to the construction or transfer for which application has been made.

The Collector may either reject the petition or may proceed to inquire into the validity of the objection, giving previous notice to the Divisional Canal-officer of the place and time at which such inquiry will be held.

The Collector shall record in writing all orders passed by him under this section and the grounds thereof.

When applicant may be placed in occupation.

25. If no such objection is made, or (where such objection is made) if the Collector over-rules it, he shall give notice to the Divisional Canal-officer to that effect, and shall proceed forthwith to place the said applicant in occupation of the land marked out or of the water-course to be transferred, as the case may be.

Procedure when objection is held valid.

26. If the Collector considers any objection made as aforesaid to be valid, he shall inform the Divisional Canal-officer accordingly; and, if such officer sees fit, he may, in the case of an application under section twenty-one, alter the boundaries of the land so marked out, and may give fresh notice under section twenty-two; and the procedure hereinbefore provided shall be applicable to such notice, and the Collector shall thereupon proceed as before provided.

Procedure when Canal-officer disagrees with Collector.

27. If the Canal-officer disagrees with the Collector, the matter shall be referred for decision to the Commissioner.

Such decision shall be final, and the Collector, if he is so directed by such decision, shall, subject to the provisions of section twenty-eight, cause the said applicant to be placed in occupation of the land so marked out or of the water-course to be transferred, as the case may be. Act VIII. of 1873.

28. No such applicant shall be placed in occupation of such land or water-course, until he has paid to the person named by the Collector such amount as the Collector determines to be due as compensation for the land or water-course so occupied or transferred, and for any damage caused by the marking out or occupation of such land, together with all expenses incidental to such occupation or transfer.

Expenses to be paid by applicant before receiving occupation.

In determining the compensation to be made under this section, the Collector shall proceed under the provisions of the Land Acquisition Act, 1870; but he may, if the person to be compensated so desire, award such compensation in the form of a rent-charge payable in respect of the land or water-course occupied or transferred.

Procedure in fixing compensation.

If such compensation and expenses are not paid when demanded by the person entitled to receive the same, the amount may be recovered by the Collector as if it were an arrear of land-revenue, and shall, when recovered, be paid by him to the person entitled to receive the same.

Recovery of compensation and expenses.

29. When any such applicant is placed in occupation of land or of a water-course as aforesaid, the following rules and conditions shall be binding on him and his representative in interest:—

Conditions binding on applicant placed in occupation.

First.—All works necessary for the passage across such water-course, of water-courses existing previous to its construction and of the drainage intercepted by it, and for affording proper communications across it for the convenience of the neighbouring lands, shall be constructed by the applicant, and be maintained by him or his representative in interest to the satisfaction of the Divisional Canal-officer.

Second.—Land occupied for a water-course under the provisions of section twenty-two shall be used only for the purpose of such water-course.

Third.—The proposed water-course shall be completed to the satisfaction of the Divisional Canal-officer within one year after the applicant is placed in occupation of the land.

In cases in which land is occupied or a water-course is transferred on the terms of a rent-charge—

Fourth.—The applicant or his representative in interest shall, so long as he occupies such land or water-course, pay rent for the same at such rate and on such days as are determined by the Collector when the applicant is placed in occupation.

Fifth.—If the right to occupy the land cease owing to a breach of any of these rules, the liability to pay the said rent shall continue until the applicant or his representative in interest has restored the land to its original condition, or until he has paid, by way of compensation for any injury done to the said land, such amount and to such persons as the Collector determines.

Sixth.—The Collector may, on the application of the person entitled to receive such rent or compensation, determine the amount of rent due, or as-

Act VIII. of 1873.

sess the amount of such compensation ; and, if any such rent or compensation be not paid by the applicant or his representative in interest, the Collector may recover the amount, with interest thereon at the rate of six per cent. per annum from the date on which it became due, as if it were an arrear of land-revenue, and shall pay the same, when recovered, to the person to whom it is due.

If any of the rules and conditions prescribed by this section are not complied with,

or if any water-course constructed or transferred under this Act is disused for three years continuously,

the right of the applicant, or of his representative in interest, to occupy such land or water-course shall cease absolutely.

Procedure applicable to occupation for extensions and alterations.

30. The procedure hereinbefore provided for the occupation of land for the construction of a water-course shall be applicable to the occupation of land for any extension or alteration of a water-course, and for the deposit of soil from water-course clearances.

PART IV.

OF THE SUPPLY OF WATER.

In absence of written contract, water-supply to be subject to rules.

31. In the absence of a written contract, or so far as any such contract does not extend, every supply of canal-water shall be deemed to be given at the rates and subject to the conditions prescribed by the rules to be made by the Local Government in respect thereof.

Conditions as to—

32. Such contracts and rules must be consistent with the following conditions :—

power to stop water-supply ;

(*a.*) The Divisional Canal-officer may not stop the supply of water to any water-course, or to any person, except in the following cases :—

(1) whenever and so long as it is necessary to stop such supply for the purpose of executing any work ordered by competent authority and with the previous sanction of the Local Government ;

(2) whenever and so long as any water-course is not maintained in such proper customary repair as to prevent the wasteful escape of water therefrom ;

(3) within periods fixed from time to time by the Divisional Canal-officer :

Claims to compensation in case of failure or stoppage of supply ;

(*b.*) No claim shall be made against the Government for compensation in respect of loss caused by the failure or stoppage of the water in a canal, by reason of any cause beyond the control of the Government, or of any repairs, alterations, or additions to the canal, or of any measures taken for regulating the proper flow of water therein, or for maintaining the established course of irrigation which the Divisional Canal-officer considers necessary ; but the person suffering such loss may claim such remission of the ordinary charges payable for the use of the water as is authorized by the Local Government :

(*c.*) If the supply of water to any land irrigated from a canal be interrupted otherwise than in the manner described in the last preceding clause, the occupier or owner of such land may present a petition for compensation to the Collector for any loss arising from such interruption, and the Collector may award to the petitioner reasonable compensation for such loss :

claims on account of interruption from other causes ;

(*d.*) When the water of a canal is supplied for the irrigation of a single crop, the permission to use such water shall be held to continue only until that crop comes to maturity, and to apply only to that crop ; but, if it be supplied for irrigating two or more crops to be raised on the same land within the year, such permission shall be held to continue for one year from the commencement of the irrigation, and to apply to such crops only as are matured within that year.

duration of supply ;

(*e.*) Unless with the permission of the Superintending Canal-officer, no person entitled to use the water of any canal, or any work, building, or land appertaining to any canal, shall sell or sub-let or otherwise transfer his right to such use : Provided that the former part of this clause shall not apply to the use by a cultivating tenant of water supplied by the owner of a water-course for the irrigation of the land held by such tenant :

sale or sub-letting of right to use canal-water ;

But all contracts made between Government and the owner or occupier of any immoveable property, as to the supply of canal-water to such property, shall be transferable therewith, and shall be presumed to have been so transferred whenever a transfer of such property takes place :

transfer, with land, of contracts for water.

(*f.*) No right to the use of the water of a canal shall be, or be deemed to have been, acquired under the Indian Limitation Act, 1877,* Part IV. ; nor shall Government be bound to supply any person with water except in accordance with the terms of a contract in writing.

No right acquired by user.

PART V.

OF WATER-RATES.

33. If water supplied through a water-course be used in an unauthorized manner, and if the person by whose act or neglect such use has occurred cannot be identified,

Liability when person using unauthorizedly cannot be identified.

the person on whose land such water has flowed if such land has derived benefit therefrom,

or if such person cannot be identified, or if such land has not derived benefit therefrom, all the persons chargeable in respect of the water supplied through such water-course,

shall be liable, or jointly liable, as the case may be, to the charges made for such use.

34. If water supplied through a water-course be suffered to run to waste, and if, after enquiry by the Divisional Canal-officer, the person through whose act or neglect such water was suffered to run to waste cannot be discovered, all the persons chargeable

Liability when water runs to waste.

* The reference to Part IV. of Act IX. of 1871 is altered in accordance with Act XV. of 1877, s. 2.

Act VIII. of 1873.

in respect of the water supplied through such water-course shall be jointly liable for the charges made in respect of the water so wasted.

Charges recoverable in addition to penalties.

35. All charges for the unauthorized use or for waste of water may be recovered in addition to any penalties incurred on account of such use or waste.

Decision of questions under sections 33 and 34.

All questions under section thirty-three or section thirty-four shall be decided by the Divisional Canal-officer, subject to an appeal to the head revenue-officer of the district, or such other appeal as may be provided under section seventy-five.

Charge on occupier for water how determined.

36. The rates to be charged for canal-water supplied for purposes of irrigation to the occupiers of land shall be determined by the rules to be made by the Local Government, and such occupiers as accept the water shall pay for it accordingly.

'Occupier's rate.'

A rate so charged shall be called the 'occupier's rate.'

'Owner's rate.'

37. In addition to the occupier's rate, a rate to be called the 'owner's rate' may be imposed, according to rules to be made by the Local Government, on the owners of canal-irrigated lands, in respect of the benefit which they derive from such irrigation.

Amount of owner's rate.

38. The owner's rate shall not exceed the sum which, under the rules for the time being in force for the assessment of land-revenue, might be assessed on such land, on account of the increase in the annual value or produce thereof caused by the canal-irrigation. And for the purpose of this section only, land which is permanently settled or held free of revenue shall be considered as though it were temporarily settled and liable to payment of revenue.

Owner's rate when not chargeable.

39. No owner's rate shall be chargeable either on the owner or occupier of land temporarily assessed to pay land-revenue at irrigation-rates, during the currency of such assessment.

When occupier is to pay both owner's rate and occupier's rate.

40. If such land is occupied by the owner,

or if it is occupied by a tenant whose rent is not liable to enhancement on the ground that the value of the produce of the land or the productive powers of the land has or have been increased by irrigation,

such owner or tenant shall pay the owner's rate as well as the occupier's rate.

Power to make rules for apportioning owner's rate.

41. In the case of a tenant with a right of occupancy, the Local Government shall have power to make rules for dividing the owner's rate between such tenant and his landlord, proportionately to the extent of the beneficial interest of each in the land.

When owner is to pay owner's rate.

42. If the owner of the land is not the occupier, but has power to enhance the rent of the occupier on the ground that the value of the produce or the productive powers of the land has or have been increased by irrigation ;

or if, when the amount of rent was fixed, the land was irrigated from the canal,

the owner shall pay the owner's rate.

43. If a revision of settlement is a ground for entertaining a suit for the enhancement of rent, the introduction of canal-irrigation into any land shall have the same effect on the landlord's right to re-enhance the rent of a tenant with a right of occupancy of such land, as if a revision of settlement had taken place, under which the revenue payable in respect of such land had been increased.

Effect of introduction of canal-irrigation on landlord's right to enhance.

44. Where a water-rate is charged on land held by several joint owners, it shall be payable by the manager or other person who receives the rents or profits of such land, and may be deducted by him from such rents or profits before division, or may be recovered by him from the persons liable to such rate in the manner customary in the recovery of other charges on such rents or profits.

Water-rate by whom payable when charged on land held by several owners.

*Recovery of Charges.**

45. Any sum, lawfully due under this Part, and certified by the Divisional Canal-officer to be so due, which remains unpaid after the day on which it becomes due, shall be recoverable by the Collector from the person liable for the same as if it were an arrear of land-revenue.

Certified dues recoverable as land-revenue.

46. The Divisional Canal-officer or the Collector may enter into an agreement with any person for the collection and payment to the Government by such person of any sum payable under this Act by a third party.

Power to contract for collection of canal-dues.

When such agreement has been made, such person may recover such sum by suit as though it were a debt due to him, or an arrear of rent due to him on account of the land, work, or building in respect of which such sum is payable, or for or in which the canal water shall have been supplied or used.

If such person makes default in the payment of any sum collected by him under this section, such sum may be recovered from him by the Collector under section forty-five ; and if such sum or any part of it be still due by the said third party, the sum or part so due may be recovered in like manner by the Collector from such third party.

47. The Collector may require the lambardár or person under engagement to pay the land-revenue of any estate, to collect and pay any sums payable under this Act by a third party, in respect of any land or water in such estate.

Lambardárs may be required to collect canal-dues.

Such sums shall be recoverable by the Collector as if they were arrears of land-revenue due in respect of the defaulter's share in such estate ;

and for the purpose of collecting such sums from the subordinate zamindárs, raiyats, or tenants, such lambardár or person may exercise the powers, and shall be subject to the rules laid down in the law for the time being in force in respect to the collection by him of the rents of land or of shares of land-revenue.

The Local Government shall provide

(*a*) for remunerating persons collecting sums under this section ; or

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* As to the application of ss. 45 to 47 to the recovery of drainage-rates, see s. 60, *infra*.

Act VIII. of 1873.

(*b*) for indemnifying them against expenses properly incurred by them in such collection; or

(*c*) for both such purposes.

Fines excluded from sections 45, 46, 47.

48. Nothing in sections forty-five, forty-six, or forty-seven applies to fines.

PART VI.

OF CANAL-NAVIGATION.

Detainer of vessels violating rules.

49. Any vessel entering or navigating any canal contrary to the rules made in that behalf by the Local Government, or so as to cause danger to the canal or the other vessels therein, may be removed or detained, or both removed and detained, by the Divisional Canal-officer, or by any other person duly authorized in this behalf.

Liability of owners of vessels causing damage.

The owner of any vessel causing damage to a canal, or removed or detained under this section, shall be liable to pay to the Government such sum as the Divisional Canal-officer, with the approval of the Superintending Canal-officer, determines to be necessary to defray the expenses of repairing such damage, or of such removal or detention, as the case may be.

Recovery of fines for offences in navigating canals.

50. Any fine imposed under this Act upon the owner of any vessel, or the servant or agent of such owner or other person in charge of any vessel, for any offence in respect of the navigation of such vessel, may be recovered either in the manner prescribed by the Code of Criminal Procedure, 1882,* or, if the Magistrate imposing the fine so directs, as though it were a charge due in respect of such vessel.

Power to seize and detain vessel on failure to pay charges.

51. If any charge due under the provisions of this Part in respect of any vessel is not paid on demand to the person authorized to collect the same, the Divisional Canal-officer may seize and detain such vessel and the furniture thereof, until the charge so due, together with all expenses and additional charges arising from such seizure and detention, is paid in full.

Power to seize cargo or goods, if charges due thereon are not paid.

52. If any charge due under the provisions of this Part in respect of any cargo or goods carried in a Government vessel on a canal, or stored on or in lands or warehouses occupied for the purposes of a canal, is not paid on demand to the person authorized to collect the same, the Divisional Canal-officer may seize such cargo or goods, and detain them until the charge so due, together with all expenses and additional charges arising from such seizure and detention, is paid in full.

Procedure for recovery of such charges after seizure.

53. Within a reasonable time after any seizure under section fifty-one or section fifty-two, the said Canal-officer shall give notice to the owner or person in charge of the property seized that it, or such portion of it as may be necessary, will, on a day to be named in the notice, but not sooner than fifteen days from the date of

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* The reference to Act X. of 1872 is altered in accordance with Act X. of 1882, s. 3.

the notice, be sold in satisfaction of the claim on account of which such property was seized, unless the claim be discharged before the day so named. Act VIII. of 1873.

And, if such claim be not so discharged, the said Canal-officer may, on such day, sell the property seized or such part thereof as may be necessary to yield the amount due, together with the expenses of such seizure and sale :

Provided that no greater part of the furniture of any vessel or of any cargo or goods shall be so sold than shall, as nearly as may be, suffice to cover the amount due in respect of such vessel, cargo, or goods.

The residue of such furniture, cargo, or goods, and of the proceeds of the sale, shall be made over to the owner or person in charge of the property seized.

Procedure in respect of vessels abandoned and goods unclaimed.

54. If any vessel be found abandoned in a canal, or any cargo or goods carried in a Government vessel on a canal, or stored on or in lands or ware-houses occupied for the purposes of a canal, be left unclaimed for a period of two months, the Divisional Canal-officer may take possession of the same.

The officer so taking possession may publish a notice that, if such vessel and its contents, or such cargo or goods, are not claimed previously to a day to be named in the notice, not sooner than thirty days from the date of such notice, he will sell the same ; and, if such vessel, contents, cargo, or goods be not so claimed, he may, at any time after the day named in the notice, proceed to sell the same.

Disposal of proceeds of sale.

The said vessel and its contents, and the said cargo or goods, if unsold, or, if a sale has taken place, the proceeds of the sale, after paying all tolls, charges, and expenses incurred by the Divisional Canal-officer on account of the taking possession and sale, shall be made over to the owner of the same, when his ownership is established to the satisfaction of the Divisional Canal-officer.

If the Divisional Canal-officer is doubtful to whom such property or proceeds should be made over, he may direct the property to be sold as aforesaid, and the proceeds to be paid into the district-treasury, there to be held until the right thereto be decided by a Court of competent jurisdiction.

PART VII.

Of Drainage.

Power to prohibit obstructions, or order their removal.

55. Whenever it appears to the Local Government that injury to any land or the public health or public convenience has arisen or may arise from the obstruction of any river, stream, or drainage-channel, such Government may, by notification published in the official Gazette,* prohibit, within limits to be defined in such notification, the formation of any obstruction, or may, within such limits, order the removal or other modification of such obstruction.

Thereupon so much of the said river, stream, or drainage-channel as is comprised within such limits, shall be held to be a drainage-work as defined in section three.

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* See *North-Western Provinces Gazette*, 2nd August, 1873, p. 938 : 17th January 1864, p. 169.

Act VIII. of 1873.

Power to remove obstructions after prohibition.

56. The Divisional Canal-officer, or other person authorized by the Local Government in that behalf, may, after such publication, issue an order to the person causing or having control over any such obstruction to remove or modify the same within a time to be fixed in the order.

If, within the time so fixed, such person does not comply with the order, the said Canal-officer may himself remove or modify the obstruction; and if the person to whom the order was issued does not, when called upon, pay the expenses involved in such removal or modification, such expenses shall be recoverable by the Collector from him or his representative in interest as an arrear of land-revenue.

Preparation of schemes for works of improvement.

57. Whenever it appears to the Local Government that any drainage-works are necessary for the improvement of any lands, or for the proper cultivation or irrigation thereof,

or that protection from floods or other accumulations of water, or from erosion by a river, is required for any lands,

the Local Government may cause a scheme for such drainage-works to be drawn up and published, together with an estimate of its cost and a statement of the proportion of such cost which the Government proposes to defray, and a schedule of the lands which it is proposed to make chargeable in respect of the scheme.

Powers of persons employed on such schemes.

58. The persons authorized by the Local Government to draw up such scheme may exercise all or any of the powers conferred on Canal-officers by section fourteen.

Rate on lands benefited by works.

59. An annual rate, in respect of such scheme, may be charged, according to rules to be made by the Local Government, on the owners of all lands which shall, in the manner prescribed by such rules, be determined to be so chargeable.

Such rate shall be fixed as nearly as possible so as not to exceed either of the following limits :—

(1.) Six per cent. per annum on the first cost of the said works, adding thereto the estimated yearly cost of the maintenance and supervision of the same, and deducting therefrom the estimated income, if any, derived from the works, excluding the said rate :

(2.) In the case of agricultural land, the sum which, under the rules then in force for the assessment of land-revenue, might be assessed on such land on account of the increase of the annual value or produce thereof caused by the drainage-work.

Such rate may be varied from time to time, within such maximum, by the Local Government.

So far as any defect to be remedied is due to any canal, water-course, road, or other work or obstruction, constructed or caused by the Local Government or by any person, a proportionate share of the cost of the drainage-works required for the remedy of the said defect shall be borne by such Government or such person as the case may be.

Recovery of rate.

60. Any such drainage-rate may be collected and recovered in manner provided by sections forty-five, forty-six, and forty-seven, for the collection and recovery of water-rates.

Disposal of claims to compensation.

61. Whenever, in pursuance of a notification made under section fifty-five, any obstruction is removed or modified, Act VIII of 1873.

or whenever any drainage-work is carried out under section fifty-seven,

all claims for compensation on account of any loss consequent on the removal or modification of the said obstruction or the construction of such work may be made before the Collector, and he shall deal with the same in the manner provided in section ten.

Limitation of such claims.

62. No such claim shall be entertained after the expiration of one year from the occurrence of the loss complained of, unless the Collector is satisfied that the claimant had sufficient cause for not making the claim within such period.

PART VIII.

OF OBTAINING LABOUR FOR CANALS AND DRAINAGE-WORKS.

Definition of 'labourer.'

63. For the purposes referred to in this Part, the word 'labourer' includes persons who exercise any handicraft specified in rules to be made in that behalf by the Local Government.

Power to prescribe number of labourers to be supplied by persons benefited by canal.

64. In any district in which a canal or drainage-work is constructed, maintained, or projected by Government, the Local Government may, if it thinks fit, direct the Collector

(*a*) to ascertain the proprietors, sub-proprietors, or farmers, whose villages or estates are or will be, in the judgment of the Collector, benefited by such canal or drainage-work, and

(*b*) to set down in a list, having due regard to the circumstances of the district and of the several proprietors, sub-proprietors, or farmers, the number of labourers which shall be furnished by any of the said persons, jointly or severally, from any such village or estate, for employment on any such canal or drainage-work when required as hereinafter provided.

The Collector may, from time to time, add to or alter such list or any part thereof.

Procedure for obtaining labour for works urgently required.

65. Whenever it appears to a Divisional Canal-officer duly authorized by the Local Government, that, unless some work is immediately executed, such serious damage will happen to any canal or drainage-work as to cause sudden and extensive public injury,

and that the labourers necessary for the proper execution thereof cannot be obtained in the ordinary manner within the time that can be allowed for the execution of such work so as to prevent such injury,

the said officer may require any person named in such list to furnish as many labourers (not exceeding the number which, according to the said list, he is liable to supply) as to the said officer seem necessary for the immediate execution of such work.

Every requisition so made shall be in writing, and shall state

(*a*) the nature and locality of the work to be done,

(*b*) the number of labourers to be supplied by the person upon whom the requisition is made, and

Act VIII. of 1873.

(c) the approximate time for which, and the day on which, the labourers will be required ;

and a copy thereof shall be immediately sent to the Superintending Canal-officer for the information of the Local Government.

The Local Government shall fix, and may from time to time alter, the rates to be paid to any such labourers : provided that such rates shall exceed the highest rates for the time being paid in the neighbourhood for similar work. In the case of every such labourer, the payment shall continue for the whole period during which he is, in consequence of the provisions of this Part, prevented from following his ordinary occupation.

The Local Government may, with the previous sanction of the Governor-General in Council, direct that the provisions of this Part shall apply, either permanently or temporarily (as the case may be), to any district or part of a district for the purpose of effecting necessary annual silt-clearances, or to prevent the proper operation of a canal or drainage-work being stopped, or so much interfered with as to stop the established course of irrigation or drainage.

Liability of labourers under requisition.

66. When any requisition has been made on any person named in the said list, every labourer ordinarily resident within the village or estate of such person shall be liable to supply, and to continue to supply, his labour for the purposes aforesaid.

PART IX.

OF JURISDICTION.

Jurisdiction under this Act of Civil Courts.

67. Except where herein otherwise provided, all claims against Government in respect of anything done under this Act may be tried by the Civil Courts ; but no such Court shall in any case pass an order as to the supply of canal-water to any crop sown or growing at the time of such order.

Settlement of differences as to mutual rights and liabilities of persons interested in water-course.

68. Whenever a difference arises between two or more persons in regard to their mutual rights or liabilities in respect of the use, construction, or maintenance of a water-course, any such person may apply in writing to the Divisional Canal-officer stating the matter in dispute. Such officer, shall thereupon give notice to the other persons interested, that, on a day to be named in such notice, he will proceed to enquire into the said matter. And, after such enquiry, he shall pass his order thereon, unless he transfers (as he is hereby empowered to do) the matter to the Collector, who shall thereupon enquire into and pass his order on the said matter.

Such order shall be final as to the use or distribution of water for any crop sown or growing at the time when such order is made, and shall thereafter remain in force until set aside by the decree of a Civil Court.

Power to summon and examine witnesses.

69. Any officer empowered under this Act to conduct any inquiry may exercise all such powers connected with the summoning and examining of witnesses as are conferred on Civil Courts by the Code of Civil Procedure ;* and every such inquiry shall be deemed a judicial proceeding.

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* This reference should now be read as applying to Act XIV. of 1882.—See s. 3 of that Act.

PART X.

OF OFFENCES AND PENALTIES.

Offences under Act.

70. Whoever, without proper authority, and voluntarily, does any of the acts following, that is to say—

(1) damages, alters, enlarges, or obstructs any canal or drainage-work;

(2) interferes with, increases, or diminishes the supply of water in, or the flow of water from, through, over, or under, any canal or drainage-work;

(3) interferes with or alters the flow of water in any river or stream, so as to endanger, damage, or render less useful any canal or drainage-work;

(4) being responsible for the maintenance of a water-course, or using a water-course, neglects to take proper precautions for the prevention of waste of the water thereof, or interferes with the authorized distribution of the water therefrom, or uses such water in an unauthorized manner;

(5) corrupts or fouls the water of any canal so as to render it less fit for the purposes for which it is ordinarily used;

(6) causes any vessel to enter or navigate any canal contrary to the rules for the time being prescribed by the Local Government for entering or navigating such canal;

(7) while navigating on any canal, neglects to take proper precautions for the safety of the canal and of vessels thereon;

(8) being liable to furnish labourers under Part VIII. of this Act, fails, without reasonable cause, to supply, or to assist in supplying, the labourers required of him;

(9) being a labourer liable to supply his labour under Part VIII. of this Act, neglects, without reasonable cause, so to supply, and to continue to supply, his labour;

(10) destroys or moves any level-mark or water-gauge fixed by the authority of a public servant;

(11) passes, or causes animals or vehicles to pass, on or across any of the works, banks, or channels of a canal or drainage-work contrary to rules made under this Act, after he has been desired to desist therefrom;

(12) violates any rule made under this Act, for breach whereof a penalty may be incurred,

shall be liable, on conviction before a Magistrate of such class as the Local Government directs in this behalf, to a fine not exceeding fifty rupees, or to imprisonment not exceeding one month, or to both.

Penalty.

Saving of prosecution under other laws.

71. Nothing herein contained shall prevent any person from being prosecuted under any other law for any offence punishable under this Act: Provided that no person shall be punished twice for the same offence.

Compensation to person injured.

72. Whenever any person is fined for an offence under this Act, the Magistrate may direct that the whole or any part of such fine may be paid by way of compensation to the person injured by such offence.

Act VIII. of 1873.

73. Any person in charge of or employed upon any canal or drainage-work may remove from the lands or buildings belonging thereto, or may take into custody without a warrant, and take forthwith before a Magistrate or to the nearest police-station, to be dealt with according to law, any person who, within his view, commits any of the following offences :—

Power to arrest without warrant.

(1) wilfully damages or obstructs any canal or drainage-work ;

(2) without proper authority interferes with the supply or flow of water in or from any canal or drainage-work, or in any river or stream, so as to endanger, damage, or render less useful any canal or drainage-work.

74. In this Part the word 'canal' shall (unless there be something repugnant in the subject or context) be deemed to include also all lands occupied by Government for the purposes of canals, and all buildings, machinery, fences, gates, and other erections, trees, crops, plantations, or other produce, occupied by or belonging to Government, upon such lands.

Definition of 'canal.'

Of Subsidiary Rules.

75. The Local Government may, from time to time, with the previous sanction of the Governor-General in Council, make rules to regulate the following matters :—

Power to make, alter, and cancel rules.

(1) the proceedings of any officer who, under any provision of this Act, is required or empowered to take action in any matter ;

(2) the cases in which, and the officers to whom, and the conditions subject to which, orders and decisions given under any provision of this Act, and not expressly provided for as regards appeal, shall be appealable ;

(3) the persons by whom, *and** the time, place, or manner, at or in which, anything for the doing of which provision is made in this Act, shall be done ;

(4) the amount of any charge made under this Act ;

(5) and generally to carry out the provisions of this Act.

The Local Government may from time to time, with the like sanction, alter or cancel any rules so made.

Such rules, alterations, and cancelments shall be published in the local official Gazette, and shall thereupon have the force of law.

Publication of rules.

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* In s. 75, cl. 3, the word "and" has been inserted by Act XII. of 1891, Sch. II.

ACT X. OF 1873.*

Act X. of 1873.

THE INDIAN OATHS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 8TH APRIL 1873.

An Act to consolidate the law relating to Judicial Oaths, and for other purposes.

Preamble.

WHEREAS it is expedient to consolidate the law relating to judicial oaths, affirmations, and declarations, and to repeal the law relating to official oaths, affirmations, and declarations; It is hereby enacted as follows:—

I.—Preliminary.

Short title.

1. This Act may be called "The Indian Oaths Act, 1873:"

Local extent.

It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the territories of Native Princes and States in alliance with Her Majesty.

2. [*Repealed by Act XII. of 1873.*]

Saving of certain oaths and affirmations.

3. Nothing herein contained applies to proceedings before Courts-martial, or to oaths, affirmations, or declarations, prescribed by any law which, under the provisions of the Indian Councils Act, 1861, the Governor-General in Council has not power to repeal.

II.—Authority to administer Oaths and Affirmations.

Authority to administer oaths and affirmations.

4. The following Courts and persons are authorized to administer, by themselves or by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law:—

(*a*) All Courts and persons having, by law or consent of parties, authority to receive evidence;

(*b*) The Commanding Officer of any military station occupied by troops in the service of Her Majesty: provided—

(*i*) that the oath or affirmation be administered within the limits of the station, and

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* Act X. of 1873 has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886.

It is included in the Schedule to the Santál Parganas Laws Regulation, III. of 1886.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

The Districts of Hazáribagh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum	See *Gazette of India*	Oct. 22, 1881, Pt. I., p. 504.
The North-Western Provinces Tarái	Ditto	Sep. 23, 1876, Pt. I., p. 505.

It has been extended, under the same Act, to the Scheduled District of Coorg.—See *Gazette of India*, Aug. 5, 1876, Pt. I., p. 417.

Act X. of 1873.

(2) that the oath or affirmation be such as a Justice of the Peace is competent to administer in British India.

III.—Persons by whom Oaths or Affirmations must be made.

Oaths or affirmations to be made by—

witnesses;

interpreters;

jurors.

5. Oaths or affirmations shall be made by the following persons:—

(*a*) all witnesses, that is to say, all persons who may lawfully be examined or give, or be required to give, evidence by or before any Court or person having, by law or consent of parties, authority to examine such persons or to receive evidence;

(*b*) interpreters of questions put to, and evidence given by, witnesses; and

(*c*) jurors.

Nothing herein contained shall render it lawful to administer in a criminal proceeding an oath or affirmation to the accused person, or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.

Affirmation by natives or by persons objecting to oaths.

6. Where the witness, interpreter, or juror is a Hindu or Muhammadan,

or has an objection to making an oath,

he shall, instead of making an oath, make an affirmation.

In every other case, the witness, interpreter, or juror, shall make an oath.

IV.—Forms of Oaths and Affirmations.

Forms of oaths and affirmations.

7. All oaths and affirmations made under section 5 shall be administered according to such forms as the High Court may from time to time prescribe.

And, until any such forms are prescribed by the High Court, such oaths and affirmations shall be administered according to the forms now in use.

Explanation.—As regards oaths and affirmations administered in the Court of the Recorder of Rangoon, and the Court of Small Causes of Rangoon, the Recorder of Rangoon shall be deemed to be the High Court within the meaning of this section.

Power of Court to tender certain oaths.

8. If any party to, or witness in, any judicial proceeding, offers to give evidence on oath or solemn affirmation in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit, notwithstanding anything hereinbefore contained, tender such oath or affirmation to him.

Court may ask party or witness whether he will make oath proposed by opposite party.

9. If any party to any judicial proceeding offers to be bound by any such oath or solemn affirmation as is mentioned in section 8, if such oath or affirmation is made by the other party to, or by any witness in, such proceeding, the Court may, if it thinks fit, ask such party or witness, or cause him to be asked, whether or not he will make the oath or affirmation:

Provided that no party or witness shall be compelled to attend personally in Court solely for the purpose of answering such question. Act X. of 1873.

Administration of oath if accepted.

10. If such party or witness agrees to make such oath or affirmation, the Court may proceed to administer it; or if it is of such a nature that it may be more conveniently made out of Court, the Court may issue a commission to any person to administer it, and authorize him to take the evidence of the person to be sworn or affirmed, and return it to the Court.

Evidence conclusive as against person offering to be bound.

11. The evidence so given shall, as against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated.

Procedure in case of refusal to make oath.

12. If the party or witness refuses to make the oath or solemn affirmation referred to in section 8, he shall not be compelled to make it, but the Court shall record, as part of the proceedings, the nature of the oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal.

V.—Miscellaneous.

Proceedings and evidence not invalidated by omission of oath or irregularity.

13. No omission to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever in the form in which any one of them is administered, shall invalidate any proceeding, or render inadmissible any evidence whatever, in or in respect of which such omission, substitution, or irregularity took place, or shall affect the obligation of a witness to state the truth.

Persons giving evidence bound to state the truth.

14. Every person giving evidence on any subject before any Court or person hereby authorized to administer oaths and affirmations shall be bound to state the truth on such subject.*

Amendment of Act XLV. of 1860, sections 178 and 181.

15. The Indian Penal Code, sections 178 and 181, shall be construed as if, after the word "oath," the words "or affirmation" were inserted.

Official oaths abolished.

16. Subject to the provisions of sections 3 and 5, no person appointed to any office shall, before entering on the execution of the duties of his office, be required to make any oath, or to make or subscribe any affirmation or declaration whatever.

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* See Act XLV. of 1860, s. 191.

Act XIV. of 1837.

ACT XIV. OF 1873.*

THE LUNATIC SOLDIERS' PROPERTY ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 11TH SEPTEMBER 1873.

*An Act to provide for the security and application of the effects of Officers and Soldiers becoming insane on service, but not removed, put on half-pay, or discharged.**

Preamble.

WHEREAS it is expedient to provide for the security and application of the effects of Officers and Soldiers becoming insane on service, but not removed, put on half-pay, or discharged; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Lunatic Soldiers' Property Act, 1873:"

Local extent.

It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the dominions of Native Princes and States in India in alliance with Her Majesty;

Commencement.

[*Repealed by Act XVI. of 1874.*]

Interpretation-clause.

2. In this Act—

"Officer."

"Officer" means a Commissioned Officer of Her Majesty's Army, or of Her Majesty's Indian Army; and

"Soldier."

"Soldier" means a Soldier of Her Majesty's Army, or a European Soldier of Her Majesty's Indian Army, including a Warrant and a Non-Commissioned Officer.

Securing of effects of insane by Committee.

3. When an officer or soldier becomes insane on service, but is not removed, put on half-pay, or discharged, on the ground of insanity, such Committee of officers as the Governor-General in Council may from time to time prescribe, shall immediately secure all such of his effects as are within the territories to which this Act extends.

Application of effects.

4. Such effects shall be liable to be applied in or towards payment of any expenses necessarily incurred in the maintenance and removal of such officer or soldier to any place in India, and of any such expenses and debts incurred and owing by him as would, under Part I. of the Regimental Debts Act, 1863, be preferential charges on his moveable property in case he had died on service, with the like preference, in the like order, and subject to the like provision for decision of doubt or difference, as would in that case apply, as nearly as may be, *mutatis mutandis*.

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* Act XIV. of 1873 has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts: The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum.—See *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504.

It extends the provisions of Part III. of the Regimental Debts Act (26 & 27 Vic., c. 57) to cases of European lunatics retained on the strength of their regiments.

5 If any person who would, if such officer or soldier were dead, be entitled to take out representation to him (otherwise than as a creditor), or his wife (if any), or any near relative, pays in full the expenses and debts aforesaid, the said Committee shall not further interfere in relation to the property.

Stay of proceedings by Committee on payment of expenses and debts by representative.

6. If such payment is not made, then, within one month after the insanity is known at the quarters where the property is, the said Committee may sell and convert into money such part of the property as they think fit,

Administration by Committee.

and, after paying out of the proceeds the expenses attending the discharge of their duties, shall pay thereout the expenses and debts aforesaid,

and shall dispose of any property then remaining in their hands in such manner as may from time to time be prescribed by the Governor-General in Council, or by such officer as he appoints in this behalf, to the end that the same may be applied for the benefit of the officer or soldier to whom it belongs.

7. Every payment or application of money, and every sale or other disposition of property, made by any Committee in pursuance of this Act, shall be valid as against all persons whomsoever.

Validation of payments, sales, and dispositions by Committee.

And every officer belonging to any such Committee shall be discharged from all liability in respect of the money or other property so paid, applied, or disposed of.

Indemnity.

8. The Governor-General in Council may, from time to time, prescribe such regulations as may seem fit for the better execution of any of the purposes of this Act.*

Power to make regulations.

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*In exercise of this power the Governor-General in Council has directed that Committees for the purposes of the above Act shall be composed and appointed in the same manner as Committees of Adjustment under clause 33 of the Regulations annexed to the Royal Warrant made on the 30th September 1864 under the Regimental Debts Act, 1863, and shall be guided in their proceedings by clause 34 of the said Regulations, in so far as the same may be found applicable.

Whenever such Committee may have, in the exercise of the discretion allowed them by section 6 of the said "Lunatic Soldiers' Property Act, 1873," reserved from sale any portion of the lunatic's property, they shall make a special report of the matter to the Military Secretary to the Government of the Presidency in which such property is situated, and shall be guided by such instructions as they may thereupon receive from him regarding the disposal of such property.—*Gazette of India*, 28th February 1874, p. 130.

Act XV. of 1873.

ACT XV. OF 1873.

THE NORTH-WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 21ST NOVEMBER 1873.

An Act to make better provision for the appointment of Municipal Committees in the North-Western Provinces and Oudh, and for other purposes.

Preamble.

WHEREAS it is expedient to make better provision for the appointment of municipal committees in the North-Western Provinces and Oudh, and for the police, conservancy, and local improvements, and for education, and for the levying of rates and taxes, in the places to which this Act may be extended; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The North-Western Provinces and Oudh Municipalities Act, 1873:"

Local extent.

It extends to the territories for the time being respectively under the government of the Lieutenant-Governor of the North-Western Provinces and under the administration of the Chief Commissioner of Oudh.

Repeal of enactments.

2. Acts Nos. XVIII. of 1864 (*to provide for the appointment of a Municipal Committee for the City of Lucknow*), XXII. of 1865 (*to amend Act No. XVIII. of 1864*), XV. of 1867 (*to make better provision for the appointment of Municipal Committees in the Panjáb, and for other purposes*), and VI. of 1868 (*to make better provision for the appointment of Municipal Committees in the North-Western Provinces, and for other purposes*), are repealed.

But all extensions and appointments made, and all limits defined, under any of the said Acts, shall be deemed to be respectively made and defined under this Act.

And all assessments, bye-laws, rules, and regulations of any kind relating to matters provided for by this Act, which may heretofore have been made and approved by the Local Government, shall be deemed to have been made under this Act.

And all proceedings taken under any such assessment, bye-law, rule, or regulation, shall be deemed to be as valid as if they had been taken under this Act.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context—

"Committee" means a municipal committee appointed under the provisions of this Act; and

"Municipality" means any town or towns to which this Act may be extended.

Act XV. of 1873.

Power to extend Act.

4. The Local Government may, by notification published in the local official Gazette, declare its intention to extend this Act or any of its provisions to any town or towns in the territories under such Government.

Any inhabitant of such town objecting to such extension may, within six weeks from the date of the said publication, send his objection in writing to the Secretary to the Local Government, and the Local Government shall take such objection into consideration.

When six weeks from the said publication have expired, the Local Government, if no such objections have been sent as aforesaid, or (where such objections have been so sent in) if, in its opinion, they are insufficient, may, by like notification, effect the proposed extension.

Power to define limits of places to which Act extends.

5. For the purposes of this Act, the Local Government may, from time to time, by notification in the local official Gazette, define the limits of any town, and may include, within the limits of such town, any railway station, village, building, or land in the vicinity :

Provided that no cantonment shall, without the previous consent of the Governor-General in Council, be included within the limits of any town for the purposes of this Act.

The Local Government may, from time to time, by notification in the local official Gazette, declare to be united, for the purposes of this Act, any two or more towns, and may also declare by what name the municipality so formed shall be designated.

CHAPTER II.

Appointment of Municipal Committees.

Appointment of committees.

6. In any municipality to which this Act shall have been extended, the Local Government may appoint, or direct to be appointed by election, for such period, not exceeding two years, as to it may seem fit, any number of the inhabitants of, or of persons possessing property or carrying on any trade or business in, such municipality, to be members of a committee for carrying out the purposes of the Act.

The persons so appointed shall continue in office for two years, or until their successors shall have been appointed, and shall be eligible for re-appointment.

In cases where the Local Government directs the appointment to be by election, it may fix the time and manner of the election, and the qualifications of the electors and of the candidates for office, and, generally, may make such rules as it thinks fit for regulating the election.

Removal of members.

7. The Local Government may, from time to time, remove any of the members of the committee so appointed who desire to be discharged, or refuse or become incapable to act, or are convicted of an offence punishable, under the Indian Penal Code, with imprisonment for a term of not less than six months.

Addition of members.

8. The Local Government may also fill up vacancies occurring among the members of the committee, and may, if it think fit, on the recommendation of the committee, add to their number.

Act XV. of 1873.

Every member so appointed shall have the same powers, and be subject to the same liabilities, and vacate his office, and be eligible for re-appointment, as if he had been originally appointed a member under section 6.

Ex-officio members.

9. In addition to the members appointed as aforesaid, the Local Government shall have power to appoint *ex-officio* members of the committee for every place in which they exercise their offices, and to which this Act shall have been extended:

Provided that the number of such *ex-officio* members shall not be more than one-third of the total number of the committee.

Appointment of president and vice-president.

10. The Local Government may also appoint the president and vice-president, or either of them, of any committee, or sanction the election by any committee of one of their members as president or as vice-president.

Appointment of secretary.

The committee may appoint any one of their members or any other person to be their secretary.

Notification of appointments and removals of members.

11. All appointments and removals of members of a committee made under this chapter shall be notified in the local official Gazette.

CHAPTER III.

OFFICE AND MEETINGS OF COMMITTEES.

Committee to have an office.

12. The committee shall have an office, where they shall meet for the transaction of business at least once in every month.

Rules as to meetings.

13. (*a.*) The president, or, in his absence, the vice-president, shall take the chair at every meeting of the committee. In the absence of both the president and vice-president, the members present may elect a chairman for the occasion.

(*b.*) The meetings shall be either general or special.

(*c.*) The president or vice-president may, whenever he thinks fit, and he shall, upon a requisition made in writing by not less than one-fifth in number of the members, convene a meeting.

(*d.*) Notice shall be given of every such meeting, and when the meeting is to be special, at least three days' notice thereof shall be given. Every notice shall state generally the nature of the business to be transacted at the meeting proposed to be called.

(*e.*) The quorum necessary for the transaction of business at a general meeting shall be three.

(*f.*) The quorum necessary for the transaction of business at a special meeting shall be one-half of the total number of the members of the committee at the time of the meeting; and at least two-thirds of such quorum shall consist of non-official members.

(*g.*) If, within one hour from the time appointed for the meeting, a quorum is not present, the meeting, if summoned by the president or vice-president, shall be dissolved.

In any other case it shall stand adjourned to the same day in the next week at the same time and place. And, if at such adjourned meeting a quorum is not present, it shall be adjourned *sine die*.

(*h.*) All business may be transacted at a general meeting which this Act does not require to be transacted at a special meeting. Act XV. of 1873.

(*i.*) All questions which may come before the committee at any meetings shall be decided by a majority of votes. Every member shall have one vote. In case of equality of votes, the chairman shall have a second or casting vote.

(*j.*) Such decisions shall be recorded in a book kept for the purpose, and shall be published in some local English or vernacular newspaper (if any), or in such other manner as the Local Government may from time to time direct.

Correspondence between committee and Local Government.

14. All correspondence between the committee and the Local Government shall pass through the Commissioner of the Division.

The Commissioner of the Division shall be entitled to make such suggestions for the consideration of the committee as he may deem fit ; and the committee shall furnish him with any information he may call for connected with the duties imposed upon them by this Act.

CHAPTER IV.

Powers of Committees.

Power to make assessments, and levy taxes.

15. Subject to any general rules or special orders which the Governor-General in Council may from time to time make in this behalf,

every committee intending to impose taxes for the purposes of this Act shall, from time to time, give notice of such intention, and shall in such notice define the persons or property within the municipality to be taxed for the purposes of this Act, and the amount or rate of the taxes to be imposed hereunder.

Any inhabitant of such town objecting to such notice may, within a fortnight from the date of the said notice, send his objection in writing to the chairman of the committee, and the committee shall take such objection into consideration, and report their opinion thereon to the Local Government.

When a fortnight from the date of the said notice has expired, if no such objections have been sent as aforesaid, or (where such objections have been so sent in) if, in the opinion of the committee, they are insufficient, the committee may, with the previous sanction of the Local Government to be notified in the official Gazette, define the persons or property to be taxed and the amount or rate of the taxes aforesaid, and may then, at a special meeting, impose such taxes accordingly.

The committee may, at a special meeting, with the same sanction, cancel or vary any tax so imposed.

Specification of taxes.

16. Such taxes may (subject to the rules or orders last aforesaid) be all or any of the following :—

(*a.*)—A tax on houses, buildings, and lands according to the annual value thereof, not exceeding seven and a half per cent. of such value :

(*b.*)—A tax on professions and trades :

(*c.*)—Taxes on carriages, horses, mules, elephants, camels, bullocks, and asses :

Act XV. of 1873.

(*d.*)—Tolls on carriages, carts, and animals entering the limits of the municipality :

(*e.*) An octroi on articles brought within the said limits for consumption or use therein : Provided that a list of such articles shall have been submitted to and approved by the Local Government : Provided also that the Local Government may exempt from the octroi any such articles intended for consumption or use by any class of persons or animals.

Imposition of other taxes.

17. If the committee desire to impose any other or further tax than such as are hereinbefore specified, they may do so with the previous sanction of the Local Government and of the Governor-General in Council, and subject to the provisions of section 15.

Taxes to be confirmed.

18. No tax shall be collected until the assessment thereof has been confirmed by such persons and in such manner as the Local Government appoints in this behalf.

Rules for confirmation and collection of taxes.

The Local Government may, from time to time, make rules as to the persons by whom, and the manner in which, any assessment of taxes under this Act shall be confirmed, and for the collection of such taxes.

The Local Government may, from time to time, repeal, alter, or add to such rules.

No tax or rate invalid for defect of form.

19. No tax, or toll, or rate on property, made under this Act, shall be invalid for defect of form ; and it shall be enough, in any such rate on property, or any assessment of value for the purpose of making such rate, if the property rated or assessed shall be so described as to be generally known, and it shall not be necessary to name the owner or occupier thereof.

Bye-laws and Rules.

Power of committees to make bye-laws.

20. Every committee may, at a special meeting, make bye-laws, consistent with this Act, for regulating the time and place of their meeting, the conduct of their business, the division of duties among the members of the committee, the salaries, appointment, suspension, and removal of the officers and servants of the committee, and other similar matters.

Enforcement of bye-laws and rules.

21. The committee may appoint one or more of their number to carry out their resolutions, and to enforce the bye-laws and rules made, under the provisions of this Act, for the protection of the public health ; or they may appoint a special officer for such purposes.

Power to make rules as to nuisances, hire of carriages, and registration of births, marriages, and deaths.

22. The committee may, at a special meeting, make rules

for declaring what acts or omissions within the municipality shall be considered to be public nuisances ;

for defining the cases, manner, and times in and at which the officers of the committee may enter upon private property for the detection and abatement of nuisances ;

for determining the rates of hire of carriages, carts, and boats plying for hire within the limits of the municipality; Act XV. of 1873.

for securing a proper registration of births, marriages, and deaths;

and for carrying out all or any of the purposes of this Act.

The committee may from time to time, at a special meeting, repeal, alter, or add to such rules.

Confirmation of rules.

23. No rule, and no alteration or repeal of, or addition to, a rule, made under this Act, shall have effect until it has been confirmed by the Local Government.

Publication of rules and bye-laws.

24. All bye-laws and rules made under this Act, and alterations and repeals of, and additions to, such bye-laws and rules, shall be published for such length of time and in such manner as the Local Government from time to time directs.

Nuisances.

Power to prohibit repetition or continuance of nuisances.

25. Every committee may enjoin within the limits of the municipality any person not to repeat or continue a public nuisance.

Every such injunction shall be deemed to have been made by a public servant.

Power to remove nuisances.

26. Every committee which the Local Government authorizes in this behalf may, so long as such authorization continues, exercise the powers of a Magistrate of a district as described in section 521 of the Code of Criminal Procedure for the removal of nuisances; and in the exercise of such powers shall follow the procedure prescribed in sections 521 to 528 (both inclusive) of the same Code.

Purchase and Sale of Land.

Power to buy and sell land for purposes of Act.

27. Any committee may at a special meeting, and with the previous sanction of the Local Government, purchase land for the purposes of this Act, and may, at a like meeting, and with the like sanction, sell any portion of such land which is not required for the purposes aforesaid, and convey the same in the names of the president and two of the members of the committee.

Receipts.

The receipt of the president and any two members of the committee for any moneys paid to them upon any such sale shall effectually discharge the persons paying the same therefrom, or from being concerned to see to the application thereof, or being accountable for the non-application or misapplication thereof; and the proceeds of any such sale shall be applied for the purposes of this Act.

Controlling power of Local Government.

Cancellation and suspension of proceedings.

28. The Local Government may by order cancel, suspend, or limit any of the acts, proceedings, bye-laws, or rules of any committee.

Act XV. of 1873.

Conduct of litigation.

To every suit or other proceeding brought against a committee, the Local Government shall be made a party.*

29. The Local Government may also abolish any tax which shall have been sanctioned under the provisions hereinbefore contained, but not so as to entitle any person to a refund of money paid in respect of such tax.

Abolition of taxes.

CHAPTER V.

RIGHTS, DUTIES, AND LIABILITIES OF COMMITTEES.

Municipal Fund.

Municipal Fund.

30. All sums received by the committee of any municipality to which this Act extends,

and all fines levied under this Act, or under Act No. V. of 1861 (*for the regulation of Police*), on account of nuisances committed within the municipal limits,

and all receipts from property entrusted to, and managed by, the committee,

shall constitute a fund which shall be called the Municipal Fund of such municipality, and shall, together with all property which may become vested in such committee, be under their control, and shall be applied by them as trustees for the purposes of this Act.

Custody and disbursement of municipal fund.

31. The municipal fund shall, as a rule, be kept in the Government treasury of the district, or in the Bank (if any) to which the Government treasury business shall have been made over.

But in places where there is no such treasury or Bank, the said fund may, with the previous sanction of the Local Government, be deposited with any Banker, or person acting as a Banker, who has given such security for the safe custody and repayment on demand of the fund so deposited as the Local Government in each case thinks sufficient.

No disbursement of the municipal fund, or any part thereof, shall be made except under the signature of the president or vice-president and one other member of the committee.

Duties and powers of committees.

32. Every committee, so far as the municipal fund at their disposal will permit, shall, after providing out of such fund for a police-establishment in the manner hereinafter mentioned, keep the public streets, roads, drains, tanks, and water-courses of the municipality for which they are appointed, clean and in repair,

and may cause such streets and roads or any of them to be watered and lighted,

and may construct and provide for the management of poor-houses, dispensaries, market-places, and other works of general utility,

and generally may do all acts and things necessary for the purposes of conservancy and general utility within their municipality.

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* See I. L. R., 1 All. 269.

The committee may also make provision, by the establishment of new schools or the aiding of already existing schools or otherwise, for the promotion of education in their municipality. Act XV. of 1873.

Contracts.

33. Every contract made on behalf of any committee in respect of any sum exceeding twenty rupees, or in respect of any property exceeding twenty rupees in value, shall be in writing, and shall be signed by the president or vice-president and at least two other members of the committee, of whom one shall be an *ex-officio* member. Unless so executed, it shall not be binding on the committee.

Municipal Police.

Provision for police.

34. Every committee shall provide in the first place, from its funds, for the maintenance of the police-establishment in the municipality.

The municipal police shall be appointed under such Act of the Governor-General in Council as may be applicable to the town, and their number shall be fixed by the committee in consultation with the Inspector-General of Police, subject to the final decision of the Local Government.

Police to aid in carrying out orders regarding nuisances.

35. Every officer of police in any municipality to which this Act shall have been extended may take into custody without a warrant any person who, within his view, commits any of the offences mentioned in section 34 of Act No. V. of 1861 (*for the regulation of Police*), and shall carry out the orders issued by the committee for the prohibition and prevention of public nuisances, or nuisances declared to be such by any rule made under this Act.

Annual Reports and Accounts.

Annual reports and accounts to be submitted.

36. Every committee shall annually, or oftener if directed by the Local Government to do so, submit reports of all works executed, or proceedings taken, by them under the authority of this Act, and also accounts of, and relating to, the Municipal Fund.

Such accounts shall be examined or audited in such manner as the Local Government from time to time prescribes.

The committee shall also submit, at such time and in such form as may be directed by the Local Government, an estimate of their probable receipts for the financial year next following, with proposals for their expenditure.

An abstract of such estimate and proposals shall, on being so submitted, be published in such manner as the Local Government from time to time directs.

Rules as to cost and class of works.

37. The Local Government may, from time to time, make rules consistent with this Act as to the cost and the class of works which the committee may execute, and the committee shall be legally bound to obey such rules.

Public Highways.

Right of committee in public highways.

38. All public highways in any municipality in which this Act is in force, not specially reserved by Government, together with all erections thereon and all materials thereof, shall be vested in and belong to the committee.

Act XV. of 1873.

Land required for Public Purposes.

Acquisition of land for municipal purposes.

39. When any land within the limits of any municipality to which this Act is extended is required for the construction or improvement of a highway, for the promotion of the healthiness of the neighbourhood, or for any other public purpose, if the committee cannot agree with the owner for the purchase thereof, the Local Government, on the recommendation of the committee, may notify in the local official Gazette that such land is required under the provisions of the Land Acquisition Act, 1870;

and, on payment by the committee of the compensation awarded under such Act, the land shall vest in them for the purposes of this Act.

Suits by and against Committees.

Suits by and against committees.

40. Every committee shall sue and be sued in the name of their president.

Members not personally liable for contracts made by committee.

41. No member of a committee shall be personally liable for any contract made or expense incurred by or on behalf of the committee, but the funds from time to time in the hands of the committee shall be liable for, and chargeable with, all contracts made in the manner above provided for.

Liability of members for breach of trust.

42. Every member of a committee shall be liable for any misapplication of money entrusted to the committee to which he has been a party, or which happens through, or is facilitated by, the neglect of his duty; and he shall be liable to be sued for the same in such Court as the Local Government directs, as for money due to Government.

Notice previous to suing committee or their officers.

43. No suit shall be brought against a committee or any of their officers or any person acting under their direction, for anything done under this Act,* until the expiration of one month next after notice in writing has been delivered or left at the office of the committee, or at the place of abode of such person, stating the cause of suit and the name and place of abode of the intending plaintiff.

Unless such notice be proved, the Court shall find for the defendant.

Every such suit shall be commenced within three months next after the accrual of the cause of suit, and not afterwards.

If any person to whom any such notice is given shall, before suit is brought, tender sufficient amends to the plaintiff, such plaintiff shall not recover.

CHAPTER VI.

PENALTIES AND PROSECUTIONS AND RECOVERY OF TAXES.

Penalty on member or servant of committee being interested in contracts made with committee.

44. No member of a committee, or servant of a committee, shall be interested directly or indirectly in any contract made with the committee, and if any such person be so interested, he shall thereby become incapable of continuing in office or in employment as such member or servant, and shall be liable to a fine of five hundred rupees:

* See I. L. R., 1 All. 271.

Provided that no person shall, by reason of being a shareholder in or member of any incorporated or registered Company, be deemed interested in any contract entered into between such Company and the committee. Act XVI. of 1873.

45. Whoever infringes any rule made by a committee and confirmed as directed in this Act shall be liable to a fine not exceeding fifty rupees, and, in the case of a continuing infringement, to a fine not exceeding five rupees for every day after notice from the committee of such infringement.

Penalty for infringement of rules or non-payment of fines.

In default of payment of any fine imposed under this section, the defaulter shall, in the case of a continuing infringement, be liable to imprisonment for a term not exceeding one month; and, in any other case, to imprisonment for a term not exceeding eight days.

46. Prosecutions under this Act for infringements of rules may be instituted before any Magistrate by the committee or any person authorized by the committee in this behalf.

Prosecutions.

47. All arrears of taxes imposed under this Act may be recovered as if they were fines, in the manner prescribed in section 307 of the Code of Criminal Procedure.

Recovery of taxes.

ACT XVI. OF 1873.*

THE NORTH-WESTERN PROVINCES VILLAGE AND ROAD-POLICE ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 21ST NOVEMBER 1873.

An Act to consolidate and amend the Law relating to Village and Road-police in the North-Western Provinces.

WHEREAS it is expedient to consolidate and amend the law relating to the Village and Road-police in the North-Western Provinces of the Presidency of Fort William in Bengal; It is hereby enacted as follows:—

Preamble.

I.—Preliminary.

1. This Act may be called "The North-Western Provinces Village and Road-police Act, 1873:"

Short title.

†This Act extends only to the territories for the time being under the government of the Lieutenant-Governor of the North-Western Provinces.

Local extent.

[*Commencement.*] *Repealed by Act XII. of 1876.*

2. [*Repeal of enactments.*] *Repealed by Act XVI. of 1874.*

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* Act XVI. of 1873 has been declared, by notification under the Scheduled Districts Act (XIV. of 1874), to be in force in the Tarái Parganas.—See Notification No. 1553, dated Sep. 22, 1876, published in the *Gazette of India*, 1876, Pt. I., p. 505, and in the *North-Western Provinces Gazette*, 1876, p. 1278.

† Here certain words, repealed by Act XII. of 1891, Sch. I., have been omitted.

Act XVI. of 1873.

II.—Appointment of Village-police.

Right of nomination of village-policemen.

3. The nomination to the post of village-policeman shall be made by the zamindár of the village, or where there are more zamindárs than one, by the lambardár as their representative, and where there are more lambardárs than one, the opinion of the majority (unless there is some special provision to the contrary in the village administration-paper) shall prevail.

Obligation to nominate.

4. Every person authorized to nominate to the office of village-policeman shall, within fifteen days after the occurrence of a vacancy in such office, nominate a proper person to the vacant post, and communicate the nomination to the Magistrate of the district.

Discretion to appoint or reject nominee.

5. The person so nominated shall, after due enquiry into his age, character, and ability, be appointed or rejected at discretion by such Magistrate, or by some officer authorized by him in that behalf.

Power to Magistrate to appoint.

6. (*a.*) In default of such nomination within the said fifteen days, the Magistrate of the district shall appoint such person as he thinks fit to the vacancy.

Procedure in case of rejection of nominee.

(*b.*) If the nomination has been made within the said fifteen days, but the nominee is rejected, the person authorized to nominate shall, within fifteen days from the date of such rejection, nominate another person to the vacant post; and in default of such nomination, or if such nomination has been made, but the nominee is again rejected, the Magistrate of the district shall appoint such person as he thinks fit to the vacancy.

III.—Appointment of Road-police.

Appointment of road-police.

7. Subject to the rules to be framed under section 14 and for the time being in force, the Magistrate of the district may, from time to time, appoint persons to be the road-police of his district.

IV.—Duties of Village and Road-police.

Duties of village and road-policemen.

8. Every village-policeman and every road-policeman shall perform the following duties:—

(*a.*) He shall give immediate information to the officer in charge of the police-station appointed for his village or beat,

(1) of every unnatural, suspicious, or sudden death occurring in the village of which he is chaukidár, or within his beat;

(2) of each of the following offences occurring in such village or on such beat (that is to say), murder, culpable homicide, rape, dacoity, theft, robbery, mischief by fire, house-breaking, counterfeiting coin, causing grievous hurt, riot, harbouring a proclaimed offender, exposure of a child, concealment of birth, administering stupefying drugs, kidnapping, lurking house-trespass, and

(3) of all attempts and preparations to commit, and abetments of, any of the said offences:

(*b.*) He shall keep the police informed of all disputes which are likely to lead to any riot or serious affray:

(*c*.) He shall arrest all proclaimed offenders, and all persons whom he may find in the act of committing any offence specified in paragraph (*a*), clause (*z*), of this section:

(*d*.) He shall observe, and from time to time report to the officer in charge of the police-station within the jurisdiction of which his village or beat may be situate, the movements of all bad characters in or on such village or beat:

(*e*.) He shall report to the officer in charge of such police-station the arrival of suspicious characters in the neighbourhood:

(*f*.) He shall supply to the best of his ability any local information which a Magistrate or any officer of police may require, and shall promptly execute all orders issued to him by competent authority.

Procedure on arrest by village or road-policeman.

9. Whenever a village-policeman or road-policeman arrests any person, he shall take him as soon as possible to the police-station within the jurisdiction of which his village or beat is situate.

V.—Liabilities of Village and Road-police.

Dismissal of village or road-policeman.

10. The Magistrate of the district may dismiss any village-policeman or road-policeman for any misconduct or neglect of duty.

Acts punishable.

11. Every village-policeman and every road-policeman guilty of any wilful misconduct in his office, or of neglect of duty, such misconduct or neglect not being an offence within the meaning of the Indian Penal Code,

or withdrawing from the duties of his office without permission, and without having given at least two months' notice of his intention to withdraw from such duties to the persons authorized to nominate or appoint under sections 3 and 7 (as the case may be),

or offering any unnecessary personal violence to any person in his custody,

or violating any of the rules framed under section 14 and for the time being in force,

shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay, or to imprisonment for a period not exceeding three months, or to both.

Penalty.

Fines to be credited to such fund as Government appoints.

12. All fines levied under this Act on village-policemen or road-policemen shall be credited to such fund as the Local Government from time to time appoints.

VI.—Miscellaneous.

Orders of Magistrate of district subject to control of Commissioner.

13. All orders of, and appointments made by, the Magistrate of the district under section 5, 6, 7, or 10, shall be subject to control, revision, and alteration by the Commissioner to whom he is subordinate.

Power to make subsidiary rules.

14. The Local Government may from time to time frame rules,

(*a*) for the discipline of the village and road-police,

(*b*) for regulating their numbers, location, and duties, and

(*c*) for carrying out generally the purposes of this Act.

Act XIX. of 1873.

ACT XIX. OF 1873.*

THE N.-W. P. LAND-REVENUE ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 22ND DECEMBER 1873.

An Act to consolidate and amend the Law relating to Land-revenue and the jurisdiction of Revenue-officers in the North-Western Provinces.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to land-revenue and the jurisdiction of Revenue-officers in the North-Western Provinces of the Presidency of Fort William in Bengal; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The North-Western Provinces Land-revenue Act, 1873:"

Local extent.

It extends in the first instance to all the territories for the time being under the government of the Lieutenant-Governor of the said Provinces, except those specified in the first schedule hereto annexed.

But the Local Government may, by notification in the official Gazette, extend the whole or any part of this Act to all or any of the territories so excepted.*

Commencement.

This Act shall come into force on the passing thereof.

Enactments repealed.

2. The Regulations and Acts mentioned in the second schedule hereto annexed are repealed to the extent specified in the third column thereof.

But all rules prescribed, appointments made, powers conferred, and notifications published under any such enactment, and all other rules (if any) now in force and relating to any of the matters hereinafter dealt with, shall (so far as they are consistent with this Act) be deemed to have been respectively prescribed, made, conferred, and published hereunder.†

Interpretation-clause.

3. In this Act—unless there be something repugnant in the subject or context,

(1) "Mahál" means—

(*a*) any local area held under a separate engagement for the payment of the land-revenue, and for which a separate record-of-rights has been framed; and

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* As modified by Acts I. and VIII. of 1879, Act XIII. of 1882, Act XV. of 1886, Acts VIII. and XX. of 1890, and Act XII. of 1891. Act XIX. of 1873 has been extended, under its first section, to the portion of the Mirzapur District lying to the south of the Kaimor Range, except the Dhudi Kham Estate.—See Notification No. 2650A, dated Nov. 14, 1874, in the *N.-W. P. Gazette*, 1874, p. 1933. The Act has also been extended to the settled tracts of the Tarai District.—See Notification No. 1555, dated Sep. 22, 1876, in *Gazette of India*, 1876, Pt. I., p. 507, published as No. 485A, dated Oct. 7, 1876, in *N.-W. P. Gazette*, 1876, p. 1311.

† In s. 2, the third paragraph, being repealed, has been omitted.—See Act XII. of 1891, Sch. I.

(*b*) any local area of which the revenue has been assigned or redeemed, and for which a separate record-of-rights has been framed, and Act XIX. of 1873

(*c*) for such purposes as the Local Government may from time to time determine, any grant of land made heretofore or hereafter under the waste-land rules for the time being in force : *

(2) "Collector of a District" means the chief officer in charge of the revenue-administration of a district :

(3) "Commissioner of a Division" means the chief officer in charge of the revenue-administration of a division :

(4) "Rent" means whatever is to be paid, delivered, or rendered by a tenant on account of his holding, use, or occupation of land :

(5) "Sír-land" means—

(*a*) land recorded as sír at the last settlement of the district in which it is situate, and continuously so recorded since ; or

(*b*) land continuously cultivated for twelve years by the proprietor himself with his own stock, or by his servants, or by hired labour ; or

(*c*) land recognized by village-custom as the special holding of a co-sharer, and treated as such in the distribution of profits or charges among the co-sharers :

(6) "Annual value" means double the amount of the revenue, or, in the case of maháls permanently assessed or exempt from the payment of revenue, double the amount that would be assessable on such maháls if they were liable to assessment or revision of assessment :

(7) "Incumbrance" means a charge upon, or claim against, land arising out of private contract :

(8) "Agricultural year" means a year commencing on the first day of July, aud ending on the thirtieth day of June :

(9) "Revenue Court" means all or any of the following authorities (that is to say) : the Board of Revenue of the North-Western Provinces, and all members thereof, Commissioners, Collectors, Assistant Collectors, Settlement-officers, Assistant Settlement-officers, and Tahsildárs :

(10) "Revenue-free" applies to land whereof the revenue has either wholly or in part been released, compounded for, redeemed, or assigned :

(11) "Board" means the Board of Revenue of the North-Western Provinces :†

(12) "Minor" means a person who has not completed his age of eighteen years.

CHAPTER II.

CONSTITUTION AND POWERS OF REVENUE-OFFICERS.

Chief controlling authority in revenue-matters.

4. The chief controlling authority in all matters connected with the land-revenue of the said territories is vested in the Board, subject to the Local Government.

* This clause has been added by Act VIII. of 1879, s. 2.

† Now the Board of Revenue of the N.-W. P. and Oudh.—See Act XX. of 1890, s. 11 (*1*).

Act XIX. of 1873.

The Board shall have the powers conferred by Chapter VII. of this Act on Commissioners of Divisions.*

Appointment and removal of members of Board.

5. The Local Government, with the previous sanction of the Governor-General in Council, shall appoint, and may from time to time remove, the members of the Board.

Power to distribute business.

6. With the previous sanction of the Local Government, and subject to rules which it may from time to time prescribe, the Board may distribute its business, and make such territorial division of its jurisdiction, amongst its members as to the Board may seem fit.†

Orders of member to be orders of Board.

All orders made or decrees passed by a member of the Board in accordance with such distribution or division shall be held to be the orders or decrees (as the case may be) of the Board.

Alteration or reversal of orders.

7. No decree or order coming under the consideration of the Board on appeal, or on being called for or reported for orders under section 253 or section 254, shall be altered or reversed without the concurrent judgment of two members of the Board.

Reference to Local Government in case of difference of opinion.

8. When the members of the Board are equally divided in opinion as to any order to be made in the course of its non-judicial business, the question regarding which there is such division shall be referred for decision to the Local Government.

Power of Board to review and alter its orders and decrees.

9. The Board may review, and may rescind, alter, or confirm, any order made by itself, or by any of its members, in the course of its non-judicial business.

But no decree passed judicially by it or by any of its members shall be so reviewed except on the application of a party to the cause within ninety days from the passing of the decree, or, if good cause be shown, within any longer period.

Members not empowered to alter each other's orders.

A single member vested with all or any of the powers of the Board shall not have power to alter or reverse a decree or order passed by the Board or by any member other than himself.

Power for Board to transfer cases.

9A. The Board may transfer any case or class of cases from any Revenue Court to any other Revenue Court competent in respect of the case or class of cases to deal therewith.‡

Power to authorize member to exercise powers of Board.

10. Notwithstanding anything hereinbefore contained, the Local Government may authorize any member of the Board to perform or exercise, either generally or in any particular locality, all or any of the duties and powers imposed and conferred on the Board.§

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* The second paragraph of s. 4 has been substituted for the original by Act XX. of 1890, s. 64.

† Division of work according to subjects between members of Board, *North-Western Provinces Gazette*, 26th June 1875, Supplement, p. 877.

Territorial division of jurisdiction of Board as a Revenue Court, *North-Western Provinces Gazette*, 1st April 1876, p. 377.

‡ S. 9A has been inserted by Act XX. of 1890, s. 3.

§ *North-Western Provinces Gazette*, 26th June 1875, Supplement, p. 877.

11. The Local Government shall appoint in each Division a Commissioner, who shall, within his Division, exercise the powers, and discharge the duties conferred and imposed on a Commissioner of Division under this Act, or under any other law for the time being in force, and who shall, subject to the control of the Board, exercise authority over all the revenue-officers in his Division.

Commissioners of Division.

11A.* (1) The Local Government may, from time to time, with the previous sanction of the Governor-General in Council, appoint an Additional Commissioner in a Division.

Appointment, powers, and duties of Additional Commissioner.

(2) An Additional Commissioner shall hold his office during the pleasure of the Local Government.

(3) An Additional Commissioner shall exercise such powers, and discharge such duties, of the Commissioner of the Division under this Act, or under any other law for the time being in force, as the Local Government may, from time to time, prescribe, but only in such cases as the Commissioner of the Division may direct.

(4) This Act and every other law for the time being applicable to the Commissioner of the Division shall apply to the Additional Commissioner, when exercising any powers or discharging any duties under sub-section (3), as if he were the Commissioner of the Division.

12. The Local Government shall appoint in each district an officer who shall be the Collector of the district, and who shall exercise, throughout his district, all the powers, and discharge all the duties, conferred and imposed on a Collector or an Assistant Collector by this Act or any other law for the time being in force.

Collector of the District.

The Local Government may confer on any Assistant Collector in charge of a sub-division of a district all or any of the powers of a Collector of a district, and all powers so conferred shall be exercised subject to the control of the Collector of the district.

13.† The Local Government may appoint to each district as many other persons as it thinks fit to be Assistant Collectors of the first or second class.

Assistant Collectors.

All such Assistant Collectors, and all other persons employed in maintaining revenue-records or otherwise in or about the business of the land-revenue, shall be subordinate to the Collector of the district.

14.‡ (1) The Local Government may from time to time create new, or abolish existing, tahsils, and alter the limits of any division, district, or tahsil, and may divide any district into sub-divisions, and from time to time alter the limits of the sub-divisions, and may from time to time, with the previous sanction of the Governor-General in Council, create new, or abolish existing, divisions or districts.

Power to create, alter, and abolish divisions, districts, tahsils, and sub-divisions.

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* S. 11A has been inserted by Act XV. of 1886, s. 1.

† S. 13 has been extended to the Kumáon and Garhwál Districts.—See Notification No. 524, dated Nov. 7, 1879, in *Gazette of India*, 1879, Pt. I., p. 720, and *N.-W. P. and Oudh Gazette*, 1879, Pt. I., p. 237.

‡ S. 14 has been substituted by Act XX. of 1890, s. 4. S. 14 has been extended to the Province of Kumáon and Garhwál and the Tarái Parganas.—See Notification No. 2468—I.-723-A, dated Oct. 3, 1891, in *Gazette of India*, 1891, Pt. I., p. 570, and *N.-W.P. and Oudh Gazette*, 1891, Pt. I., p. 507.

Act XIX. of 1873.

(2) All existing tahsils shall be deemed to be sub-divisions of districts.

Assistant Collector in charge of sub-division of district.

15. The Local Government may place any Assistant Collector of the first class in charge of one or more sub-divisions of a district, and may at any time remove him therefrom.

Such Assistant Collector shall be called an Assistant Collector in charge of a sub-division of a district, and shall exercise the powers conferred upon him by this Act or by any other law for the time being in force, subject to the control of the Collector of the district.

The Local Government may, from time to time, delegate its powers under this section to the Collector of the district, and may revoke such delegation.

Subordination of revenue-officers.

16. Every officer of a sub-division of a district employed in maintaining revenue-records or otherwise in or about the business of the land-revenue shall be subordinate to the Assistant Collector (if any) in charge of such sub-division, subject to the general control of the Collector of the district.

Conferring of powers.

17. In conferring powers under this Act, the Local Government may empower persons by name, or classes of officials generally, by their official titles.

Transfer of cases to subordinates.

18. The Collector of the district, or any Assistant Collector in charge of a sub-division of a district, or officer in charge of a settlement, may make over any case, or class of cases, arising under the provisions of this Act or otherwise, for enquiry or decision from his own file to any of his subordinates competent to deal with such case or class,

Power to withdraw cases from subordinates.

or may withdraw any such case or class of cases from any revenue-officer subordinate to him, and may deal with such case or class himself, or refer the same for disposal to any other such revenue-officer competent to deal therewith.

Power to vary and cancel powers.

19. The Local Government may vary or cancel any order conferring powers under this Act.

Collector of the district in case of temporary vacancy.

20. If the Collector of the district dies, or is disabled from performing his duties, the officer who succeeds temporarily to the chief executive administration of the district in revenue matters shall be held to be the Collector of the district under this Act until the Local Government appoints a successor to the Collector so dying or disabled, and such successor takes charge of his appointment.

Powers of officers transferred to another district.

21. Whenever any person holding an office in the service of Government, who has been invested with any powers under this Act in any district, is transferred to an equal or higher office of the same nature within another district, he shall, unless the Local Government otherwise directs, be held to be invested with the same powers in the district to which he is so transferred.

Appointment of tahsildárs.

22. Tahsildárs shall be appointed by the Board, subject to such rules as to qualification or otherwise as the Board, subject to the sanction of the Local Government, may, from time to time, make under section 257.*

* Rules as to Tahsildárs, *North-Western Provinces Gazette*, March 27, 1875, pp. 422-424: *ibid*, Dec. 23, 1876, p. 1668.

23. The Collector of the district, with the sanction of the Board, may arrange all the "mahâls"* of such district in patwâris' circles, and may, from time to time, alter the limits of such circles. Act XIX. of 1873.

Power to form and alter patwâris' circles.

But no such arrangement or alteration shall be final, unless and until it has been sanctioned by the Board.

Appointment of patwârí to each circle.

24. A patwârí shall be appointed to each circle, whether the mahâls in such circle are assessed to revenue or not.†

25. Whenever a circle is without a patwârí, the proprietors of such circle, or their representatives in interest, shall, in accordance with local custom, nominate a person to be such patwârí, and he shall be appointed by the Collector of the district or Assistant Collector.

Nomination and appointment of patwâris to fill vacancies.

26. In case of disagreement as to the nominee, the Collector or Assistant Collector shall ascertain the local custom, if any, and shall appoint the person nominated in accordance therewith.

Which nominee to be appointed in case of disagreement.

Where no such custom can be ascertained, the Collector or Assistant Collector shall appoint the nominee of those proprietors who represent the largest amount of annual value in the circle, or of their representatives in interest.

If a mahâl is held under direct management, or if the proprietor of a mahâl be under the charge of the Court of Wards, the Collector of the district or Assistant Collector shall be held to be the proprietor for the purpose of nominating a patwârí under this section.

27. If the persons in whom the nomination is vested neglect to nominate a successor to the patwârí within fifteen days from the occurrence of the vacancy, the Collector of the district or Assistant Collector shall call on them by notice to make the nomination, and, if they fail to do so within fifteen days from the receipt of notice, the Collector of the district or Assistant Collector shall make the appointment.

Appointment of patwârí on failure of person entitled to nominate.

28. If the person or persons in whom the nomination is vested nominate a man not qualified to perform the duties of patwârí, or in the nomination neglect to follow the local custom, the Collector of the district or Assistant Collector shall refuse to appoint the nominee; and if no fit person be nominated within fifteen days from the date of the notification of such refusal, he shall himself appoint a person to the vacant office:

Procedure in case of nomination of unfit person.

Provided that the Collector of the district or Assistant Collector, in making the appointment under this and the last preceding section, shall always give preference to any member of the late patwârí's family, qualified to perform the duties of the office.

Preference to member of patwârí's family.

29-31 [*Repealed by Act XIII. of 1882.*]

32. The salaries of the patwârís shall, from time to time, be fixed by the Board under the orders of the Local Government.

Salaries of patwârís.

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* The word "mahâls" has been substituted for the word "villages" by Act VIII. of 1879, s. 3.

† Rules under ss. 24 to 32, *North-Western Provinces Gazette*, 3rd April 1875, pp. 454-460; *ibid*, 28th May 1877, p. 483.

Act XIX. of 1873.

Appointment of kanúngos, and filling vacancies among them.

33. One or more kanúngos may be appointed in each tahsil for the proper supervision, maintenance, and correction of the patwáris' records.

In case of a vacancy in the office of a kanúngo, preference shall be given to some duly-qualified member of a family in which the office of kanúngo of the tahsil or any part thereof is hereditary.

If no such qualified member can be found, then one of the patwáris of the tahsil shall, if duly qualified, be appointed to the vacancy, and failing any person duly qualified among them, some other fit and competent person shall be appointed thereto.

Amount of kanúngos' salaries.

34. The salaries of kanúngos shall from time to time be fixed by the Local Government.

Kanúngos and patwáris to be public servants, and their records public records.

35. Every kanúngo and patwárí, and every person appointed temporarily to discharge the duties of any such officer, shall be deemed to be a public servant within the meaning of the Indian Penal Code;

and all official records and papers kept by any such officer shall be held to be public records and the property of Government.

CHAPTER III.*

SETTLEMENT.

Notification as to settlement.

36. Whenever the Local Government thinks that any district or other local area liable to be brought under settlement should be so brought, it shall publish a notification specifying such area;

and if it thinks that a record-of-rights in land, whether permanently settled, temporarily settled, or revenue-free, should be prepared for any district or local area, it shall publish a notification to that effect.

Notification as to record-of-rights.

Settlement to be deemed in progress until closing notified.

37. Every local area shall be held to be under settlement from the date of any notification published under section 36 and relating thereto until the issue of another notification declaring settlement-operations to be closed therein.

Every district or other local area under settlement at the time of the passing of this Act shall be held to be under settlement within the meaning of this section without the issue of the notifications prescribed by section 36.

Settlements now in progress brought under operation of Act.

Appointment and powers of Settlement-officers.

38. The Local Government may, from time to time, appoint an officer to be in charge of the settlement of one or more districts, or part of a district, and as many Assistant Settlement-officers as to it may seem fit; and such officers shall exercise the powers conferred upon them by this Act so long as such district, part of a district, or districts, is or are under settlement.

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* Chap. III. has been extended to the Kumáon and Garhwál Districts.—See Notification No. 1747, dated Nov. 2, 1876, in *Gazette of India*, 1876, Pt. I., p. 606, published as No. 567A, dated Dec. 5, 1876, in *N.-W. P. Gazette*, 1876, p. 1549.

39. The Local Government shall from time to time, with the previous sanction of the Governor-General in Council, frame and issue rules regarding the mode in which the revenue-demand is to be assessed.*

Local Government to issue rules as to mode of assessment.

40. When any district, or part of a district, is under settlement, the Settlement-officer shall have power to call upon all proprietors, by proclamation to be stuck up in some conspicuous place in each village, to erect, within fifteen days, such boundary-marks as he may think necessary to define the limits of their villages, mahâls, or fields; and, in default of their compliance within the time specified in the notice, he may cause such boundary-marks to be erected, and he shall recover the cost of the erection from the proprietors as if it were an arrear of revenue.

Powers of Settlement-officers as to erection of boundary-marks and decision of disputes.

In case of dispute concerning any boundary-marks, the Settlement-officer shall decide such dispute on the basis of possession, or may refer it to arbitration, for decision on the merits, as provided for in section 220 to section 231 (both inclusive).

41. All Settlement-officers and all officers in charge of a survey made in connection with the revenue, and their assistants, servants, agents, and workmen, may do all acts necessary for any purpose connected with the settlement or survey, as the case may be.

Power of Settlement and Survey-officers to do necessary acts.

42. The Settlement-officer may order all persons whose presence is, in his opinion, necessary for any of the purposes of this chapter to attend at any specified time and place, and to produce any written document in their possession or power; and all such persons shall be legally bound to obey such order.

Power to require attendance of persons concerned, and production of documents.

43. The settlement shall be made with the proprietor of the land, or, if the proprietor have transferred possession of his land to a mortgagee or conditional vendee, then with such mortgagee or vendee.

With whom settlement to be made.

If, at the time of settlement, a mahâl or any share thereof be in the possession of a lunatic, minor, or other person incapable of making a contract, the settlement shall be made with his guardian or manager on his behalf.

Settlement of mahâl in possession of lunatic or minor.

44. When several persons hold a mahâl, the Settlement-officer shall have power to make a joint settlement with all such persons, or with their representatives "selected" † according to the custom of the mahâl. "Such representatives shall be called lambardârs."‡

Power to make joint settlement with several proprietors or their selected representatives.

45. Whenever the Settlement-officer frames general proposals of assessment in accordance with the rules made under section 257, he shall report them through the Commissioner of the Division to the Board; and after receipt of the orders of the Board thereon, and subject to such orders, he

Framing and reporting general proposals of assessment.

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* Rules for guidance of Settlement-officers, *North-Western Provinces Gazette*, 9th October 1875, pp. 1426-1440.

† This word has been substituted for the word "elected" by Act VIII. of 1879, s. 6.

‡ The sentence quoted has been added by Act VIII. of 1879, s. 6.

Act XIX. of 1873.

shall ascertain the amount of the assessment proper for each mahál, and declare the same to the person with whom the settlement of such mahál is to be made.

Detailed assessment and declaration thereof to persons concerned.

Such declaration shall be made on a date to be notified by proclamation at the tahsil in which such mahál is situate.

46. If the persons with whom the settlement is to be made agree to the assessment so proposed, they and those (if any) whom they represent in interest shall become liable from the date of such agreement, or from such subsequent date as the Board directs, to pay such assessment:

Effect of agreement to assessment proposed.

and in maháls in which the land, or part of the land, is held in severalty, the Settlement-officer shall distribute such assessment on the lands so held.

Distribution of assessment.

47. In any mahál where, by the established custom, the land or the amount of revenue payable by each sharer is subject to periodical re-distribution or re-adjustment, the Settlement-officer may, on application of the co-sharers, enforce such re-distribution or re-adjustment according to the established custom of the mahál.

Enforcement of custom as to re-distribution of land and adjustment of revenue of shares.

48. If the person to be settled with refuse to accept the assessment offered by the Settlement-officer, or fail to accept such assessment within thirty days from the date of the declaration by the Settlement-officer under section 45, the Settlement-officer shall report the case through the Commissioner of the Division to the Board, and the Board may direct that the person so refusing or failing be excluded from the settlement for such term, not exceeding fifteen years from the date of such direction, as the Board shall fix. And the Settlement-officer or the Collector of the district may, with the previous sanction of the Board, either farm the mahál, or hold it under direct management during such term or any part thereof.

Exclusion of person declining, or failing to accept, settlement.

In such case, the person so excluded shall be entitled (subject to the orders of the Board) to an allowance out of the profits of the mahál of not less than five or more than fifteen per cent. on the proposed assessment.

Allowance to person excluded.

49. If, in a pattidárí or imperfect pattidárí mahál, some of the co-sharers refuse or fail, within thirty days from the date of the declaration by the Settlement-officer under section 45, to accept the proposed assessment, the shares of the persons so refusing or failing shall be dealt with under the provisions of section 48, and they shall receive an allowance as laid down in that section in proportion to their respective shares in the mahál:

Procedure in case of some of several proprietors refusing assessment.

Provided that the farm of such shares shall be offered in the first instance to those proprietors who have accepted the proposed terms.

Farm of shares of proprietors refusing.

50. Any proprietor excluded from settlement under section 48 or 49 shall be entitled to hold his sír-land as an ex-proprietary tenant, and the rent to be paid by him for such land during such exclusion shall be fixed by the Settlement-officer accordingly.

Adjustment of rent of the sír-lands of proprietors of estates farmed under section 48 or 49.

51. The aggregate amount of any allowance assigned under section 48 or section 49 to any proprietor excluded from settlement, and of the difference between the rent fixed under section 50 and the rent which he would be liable to pay if he were a tenant-at-will, shall not be less than five or more than fifteen per cent. on the assessment proposed by the Settlement-officer. Act XIX. of 1873.

Amount of allowance to excluded proprietor, and of difference between rent fixed and rent payable by him if he were tenant-at-will.

52. On the expiration of the term fixed under section 48 the settlement shall be offered by the Collector of the district to the person then entitled to be settled with in respect of such mahál or portion, at such assessment for the remainder of the term of settlement of the district as the Board may direct.

Offer of settlement to excluded proprietor on expiry of term of exclusion.

And if such person refuse to accept the offer, the Collector of the district shall report such refusal through the Commissioner of the Division to the Board, and such person may be excluded from settlement for such period, not exceeding the term of the settlement of the district, as the Board may direct, and shall then receive the allowance to which he would be entitled if sections 48 and 49 applied to his case. And the rent to be paid by him as an ex-proprietary tenant for his sír-land shall be fixed by the Collector of the district or Assistant Collector in accordance with the North-Western Provinces Rent Act, 1881.*

Procedure on refusal.

53. Whenever several persons possess separate heritable and transferable proprietary interests in any mahál, such interests being of different kinds, the Settlement-officer may, under the rules for the time being in force, determine

Power to direct which of several parties having separate

(*a*) which of such persons shall be admitted to engage for the payment of the revenue, due provision being made for securing the rights of the others, and

and different interests shall be admitted to settlement;

(*b*) the manner and proportion in which the nett profits of the mahál shall be allotted to the several persons possessing separate interests as aforesaid for the term of the settlement.

and to prescribe distribution of profits.

54. If, in any mahál coming under the provisions of section 53, the separate proprietors bear to each other the relation of superior and inferior, and the settlement be made with the party possessing the superior right, the Settlement-officer may make, on behalf of the superior proprietor, a sub-settlement with the inferior proprietor, by which such inferior shall be bound to pay to the superior an amount equal to the Government demand in respect of the mahál, together with the share of the profits thereof allotted to the superior proprietor under section 53:

Power to make sub-settlement with inferior proprietor in behalf of superior proprietor of mahál coming under section 53.

Provided that, if the inferior proprietor refuse to agree to the terms of such sub-settlement, the mahál shall be made over to the superior proprietor for the term of settlement.

Exclusion of inferior proprietor from sub-settlement in case of refusal of terms.

And in such case the inferior proprietor shall hold as an ex-proprietary tenant the land (if any) cultivated by him at the date of such refusal, and the superior proprietor shall pay him such annual allowance as, when added to the difference between the rent

Allowance.

* The reference to Act XVIII. of 1873 is altered in accordance with Act XII. of 1881, s. 2.

Act XIX. of 1873.

fixed for such land and the rent which the inferior proprietor would be liable to pay therefor if he were a tenant-at-will, shall not be less than five or more than fifteen per cent. of the profits allotted to him under section 53.

55. If the settlement of a mahál be made with the inferior proprietor, the amount to be paid by him shall be fixed by the Settlement-officer at such a sum as may be equal to the Government demand in respect of such mahál, together with the share of the profits allowed to the superior proprietor under section 53; and in this case the share of the superior proprietor shall be realized as revenue, and paid to him from the Government Treasury.

Assessment on inferior proprietor when settlement made with him.

56. If in any mahál there exist persons possessing proprietary rights therein which are not of such a nature as to entitle their possessors to settlement, the Settlement-officer may make such arrangements as shall secure such persons in possession of their existing rights, or of an equivalent thereto.

Power to make arrangements for the benefit of persons possessing rights which do not entitle them to settlement.

This may be done

(*a*) by the formation of a sub-settlement on behalf of the proprietors with such persons for any lands actually in their possession, or

(*b*) in mahals held as joint undivided property, and where the said rights are rights to receive from the tenants any money-payment or portion of the agricultural produce, by assigning, in lieu thereof, the proprietary right in a certain portion of the mahál, the profits of which are equivalent, in the opinion of the Settlement-officer, to the said payment or portion, or

(*c*) in such other way as shall maintain the persons referred to in the first clause of this section in the enjoyment of, or of an equivalent to, their existing rights.

57. When the waste-land belonging to, and included at the previous settlement within the boundaries of, any mahál assessed to the payment of revenue is so extensive as, in the opinion of the Settlement-officer, confirmed by the Board, to exceed the requirements of the owner of such mahál with reference to pastoral or agricultural purposes, such officer may make a separate settlement of the waste-land which he considers to be so in excess, and shall offer such waste-land to the owner of the mahál to which it belongs, at such assessment and for such term, not exceeding the period of settlement of the mahál, as the Board may order.

Separate settlement of waste-land in excess.

If the owner of the mahál accepts such offer, the Settlement-officer shall make the settlement of such waste-land accordingly, and, on the expiration of the term of such settlement, a further settlement of such waste-land shall be offered, on such terms as the Board directs, to the person entitled to be settled with in respect thereof.

If the owner of such mahál refuses such offer, the Settlement-officer shall mark off the quantity so in excess, and declare it to be a separate mahál and at the disposal of Government: Provided that there shall be allowed to the owner of the mahál to which the waste-land originally belonged such annual sum as the Board may direct, being not less than five, and not more than ten per cent. on the nett revenue realized by Government from such waste-land.

Allowance to owner of mahál refusing offer of settlement.

58. Waste-land which has neither been judicially declared to be part of any mahál, nor included within the boundaries of any mahál, at any previous settlement, shall be marked off by the Settlement-officer;

Procedure as to waste-land not included in any mahál at previous settlements.

and he shall record a proceeding declaring such land to be the property of Government, and cause a proclamation to that effect to be stuck up in the District Revenue Court and in the office of the tahsil in which such land is situated, and shall call on all persons having any claims on such land to make the same within three months from the date of the proclamation.

59. Such proclamation shall be held to be an advertisement of the disposal of such land within the meaning of Act No. XXIII. of 1863 (*to provide for the adjudication of claims to waste-lands*), section 1; and any person having claims to such land must proceed according to the provisions of that Act.

Proclamation to be held an advertisement under Act XXIII. of 1863.

60. If no claim is made to the proprietary right of such waste-land, or if such waste-land is decided to be the property of Government, but the proprietor of the adjoining mahál proves that he has theretofore enjoyed the use of such land for pastoral or agricultural purposes, the Settlement-officer may assign to such mahál so much of such waste-land as he may consider requisite for such purposes; and he shall mark off the remainder, and declare it to be the property of Government.

Procedure as to waste-land unclaimed or adjudged to belong to Government.

61. If the claimant obtain a decree under the provisions of the said Act No. XXIII. of 1863 for the whole or part of such waste-land, the Settlement-officer may deal with the land to which a title is so established under the provisions of section 57.

Settlement of waste-land adjudged to belong to claimant.

RECORD-OF-RIGHTS.

62. The Settlement-officer shall frame for each mahál a record containing a list of

Contents of record.

(*a*) all the co-sharers,

(*b*) all other persons occupying any portion of the land therein, or who are in possession of any heritable or transferable interest in such land, or receiving rent in respect thereof,

(*c*) the nature and extent of the interest held therein by each of such co-sharers and other persons, and

(*d*) all persons holding land free of rent, or revenue-free.

63. The record shall also specify the persons (if any) holding land at a rent fixed by grant or by contract, or on condition of service or otherwise, and all other tenants in the mahál, the name and caste of each, the area of their holdings, and all conditions of their tenure.

Record to include particulars as to tenants.

64. All entries in the record made under sections 62 and 63 shall be founded on the basis of actual possession, and all disputes regarding such entries, whether taken up by the Settlement-officer of his own motion or upon the complaint of the party concerned, shall be investigated and decided by him on that basis. And all persons not in possession, but claiming the right to be so, shall be referred by him to the proper Court.

Settlement of disputes as to entries to be made in record.

Act XIX. of 1873.

Arrangements of co-sharers to be recorded.

65. The Settlement-officer shall also record the arrangement made by himself or agreed to by the co-sharers—

(*a*) for the distribution of the profits derived from sources common to the proprietary body,

(*b*) for fixing the share which each co-sharer is to contribute of the Government-revenue and of the cesses levied under any law for the time being in force, and of the village-expenses,

(*c*) as to the manner in which lambardárs or co-sharers are to collect from the cultivators,

"(*d*) as to any other matters which he may be directed to record under rules framed under section 257.

"The Settlement-officer may, subject to rules to be made from time to time by the Board, with the previous sanction of the Local Government, fix and shall record—

"(*e*) the amounts of instalments of rent and the respective dates for their payment;

"(*f*) the dates for the payment of any amounts payable by inferior to superior proprietors under section 54, clause (1); and

"(*g*) the dates on which profits shall be divisible by lambardárs."*

Cesses to be consolidated with rent.

66. All cesses which are payable by tenants on account of the occupation of land assessed to revenue and taken into account in such assessment, or which, in the case of land not assessed to revenue, would have been taken into such account had the land been assessed, or in lieu of which proprietary rights have been assigned under section 56, clause (*b*), shall be consolidated with the rent payable by such tenants.

List of cesses to be made.

A list of all other cesses levied in accordance with village-custom, and generally or specially sanctioned by the Local Government, shall be made by the Settlement-officer. And, save as provided by any other enactment for the time being in force, no cesses not comprised in such list shall be enforced in any Civil or Revenue Court, and no such list shall be altered or added to during the currency of a settlement.†

Conditions on collection of cesses.

The Local Government may, from time to time, impose on the collection of any cesses so sanctioned such conditions as to conservancy, police, or other establishments connected with the village, bázár, or fair in or on account of which the cesses are levied, as it thinks fit.

Power of Governor-General in Council to declare what shall be deemed to be a cess.

While any local area is under settlement, the Governor-General in Council may, from time to time, in case of doubt, declare what shall be deemed to be a cess within the meaning of this section.‡

Determination of disputes arising under sections 65 and 66.

67. If it appear to a Settlement-officer that there exist in any mahál under settlement any disputes relative to any of the matters which he is bound to record under section 65 or section 66, he may of his own motion, and

* The clauses quoted have been substituted for the original clauses (*d*) and (*e*) by Act VIII. of 1879, s. 7.

† This clause has been substituted for the original one by Act VIII. of 1879, s. 8.

‡ This clause has been added by Act VIII. of 1879, s. 8.

without complaint being made, investigate and determine such disputes in accordance with the existing village-custom, and frame the record accordingly. Act XIX. of 1873.

68. In framing the list of tenants mentioned in section 63, the Settlement-officer shall state as to each tenant the following particulars :— Particulars to be stated in list of tenants.

(*a*) Whether, under the provisions contained in the North-Western Provinces Rent Act, 1881,* he is a tenant holding at fixed rates, or an ex-proprietary tenant, or an occupancy-tenant, or a tenant without a right of occupancy :

(*b*) The rent which the landholder and the tenant then admit to be payable by the latter :

(*c*) If he be a tenant without a right of occupancy, the number of years during which he has held the land then in his possession :

(*d*) Any other condition of the tenure, whether contained in a written lease or otherwise.

69. Notwithstanding anything contained in section 64, in case of any dispute respecting the class or tenure of any tenant, the Settlement-officer shall decide according to the principles laid down in sections 5, 6, 7, and 8 of the North-Western Provinces Rent Act, 1881.*† Determination of class of tenants.

70. In case of any dispute regarding the rent payable by any tenant, the Settlement-officer shall decide according to the principles hereinafter laid down. Determination of rent of tenants.

71. If the proprietor apply to the Settlement-officer to enhance or determine the rent of an ex-proprietary tenant, the Settlement-officer shall fix the rent of such tenant at a rate which shall be four annas in the rupee below the prevailing rate for land of a similar quality with similar advantages held by tenants-at-will in the same circle or tahsil. Enhancement and determination of rent of ex-proprietary tenants.

72. If a landholder apply to enhance the rent previously paid by any of his occupancy-tenants, Determination of rent of occupancy-tenants by Settlement-officer.

or if an occupancy-tenant apply for an abatement of the rent previously paid by him,

or if a dispute exists as to the rent to be paid by an occupancy-tenant,

the Settlement-officer may fix the rent to be paid by such tenant either by reference to the standard of the rent-rate sanctioned by the Board for purposes of assessment for similar land, with similar advantages, in the circle or tahsil in which the holding of such tenant is situate, or by reference to the customary rate of rent paid by tenants of the same class for similar land, with similar advantages, in the same circle or tahsil.

73. In all cases in which rents have theretofore been paid in kind, or on the estimated value of a portion of the crop, or by rates varying with the crop, or partly in one of such ways and partly in another or others of such ways, Power to commute rent in kind, &c., to fixed money-rents.

* The reference to Act XVIII. of 1873 is altered in accordance with Act XII. of 1881, s. 2.

† The reference to ss. 5 to 8 of Act XVIII. of 1873 is altered in accordance with Act XII. of 1891, s. 2.

Act XIX. of 1873.

application to commute such rent to a fixed money-rent may be made to the Settlement-officer either by the landholder or by any ex-proprietary tenant or occupancy-tenant.

Procedure on receiving application to commute.

74. On receipt of such application, the Settlement-officer shall deal with the case as if it were an application under section 71 or 72, and shall determine the sum to be paid in commutation in accordance with the provisions of those sections :

Provided that the Local Government may empower any Settlement-officer, when any such application made before him is opposed, to refuse, for reasons to be recorded by him in writing, to grant the same.*

Joinder of tenants in applications relating to rent.

75. Whenever an application for enhancement or abatement or commutation of rent, against or by any number of tenants, is brought before a Settlement-officer, such tenants may be sued or may sue collectively ; and it shall be no ground for dismissing or refusing to hear the application, that such tenants are wrongly joined as plaintiffs or defendants, provided all such tenants cultivate in the same mahál ;

Proviso.

but no order shall be passed in such case in which enhancement, abatement, or commutation of rent is claimed, unless the officer making such order is satisfied that all parties have had an opportunity to appear and make objection to any claims preferred against them.

Order in such cases.

76. Every order passed in any such case shall specify the extent to which each of the tenants named in the order shall be affected thereby.

Rent from what date payable.

77. The rent fixed by order of the Settlement-officer shall be payable from the first day of July next, following the date of the order of the Settlement-officer, and (subject to the provisions of sections 16 and 17 of the North-Western Provinces Rent Act, 1873†) shall not be liable to enhancement or abatement for ten years from such first day of July.

Bar to enhancement or abatement.

Powers of Local Government as to commutation-suits.

78. The Local Government may, from time to time, by notification in the official Gazette,

(*a*) declare the provisions of section 73 applicable to any district or portion of a district not under settlement ;

(*b*) declare what officers are empowered to hear and decide applications under section 73 in such district or portion of a district, and lay down rules for their guidance ;

(*c*) withdraw any notification previously published under this section.

Resumption of rent-free grants.

79. And whereas all grants (whether in writing or otherwise) for holding land exempt from the payment of rent which have been made since the first day of December 1790, by any authority other than that of the Governor-General in Council, were declared by Bengal Regulation XIX. of 1793, section 10, to be null and void, and like provisions have been, by divers Regulations, at different times, applied to the several parts of the territories to which this Act extends ; and the said Regula-

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* This proviso has been added by Act VIII. of 1879, s. 9.

† The reference to ss. 16 and 1 of Act XVIII. of 1873 is altered in accordance with Act XII. of 1881, s. 2.

tion XIX. of 1793 also provided that no length of possession should be considered to give validity to any such grant, either with regard to the property in the soil or the rents of it, it is hereby enacted as follows :— Act XIX of 1873.

Applications by the proprietors to resume such grants or to assess rent on the land shall, when the district in which the land is situate is a district under settlement, be made to the Settlement-officer, who may (subject to this Act and to any rules made hereunder and for the time being in force) make such order thereon as he deems just.

Disposal of applications to resume such grants.

80. Nothing in section 79 applies to either of the following cases :—

Saving of certain lands held rent-free.

(*a*) where land is, previously to the passing of this Act, held rent-free under a judicial decision,

(*b*) where, previously to the passing of this Act, land held rent-free has been purchased for a valuable consideration, and its resumption has been barred by Act No. X. of 1859,* section 28, or by Act IX. of 1871,† second schedule, No. 130.

81. Grants of land held under a written instrument (whether executed before or after the passing of this Act), by which the grantor expressly agrees that the grant shall not be resumed, shall be held valid as against him (but not as against his representatives after his death) during the continuance of the settlement of the district in which the land is situate, which was current at the date of the grant.

Validity of grants which grantor has expressly agreed not to resume.

82. Where any land has been for fifty years or upwards, and still is, held rent-free and by at least two successors to the original grantee, such holding shall be deemed to confer on the holder a proprietary right.

When rent-free tenure confers proprietary right.

Nothing in the Indian Limitation Act, 1877,‡ shall bar the right to make an application under this Act to assess to rent land held rent-free.

83. No length of rent-free occupancy of any land, nor any grant of land made by the proprietor, shall release such land from its liability to be charged with the payment of Government revenue.

Saving of liability for Government revenue.

84. In assessing rent under section 79, the Settlement-officer shall be guided by the provisions of sections 71 and 72, so far as they apply.

Sections 71 and 72 to apply.

85. The Settlement-officer shall record all revenue-free tenures in such form of register as the Board from time to time prescribes.

Form of register of revenue-free tenures.

86. The Settlement-officer shall enquire into the case of all lands released, conditionally or for a term, from the payment of revenue, and shall assess such lands if it appear to him that the conditions have been transgressed, or the term has expired.

Resumption in certain cases of land held revenue-free.

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* Act X. of 1859 was repealed in the North-Western Provinces by Act XVIII. of 1873, s. 2.

† Act IX. of 1871 was repealed by Act XV. of 1877.

‡ The reference to Act IX. of 1871 is altered in accordance with Act XV. of 1877, s. 2.

Act XIX. of 1873.

Title to hold free to be proved.

87. Any person claiming land free of revenue not recorded as revenue-free shall be bound to prove his title to hold such land free of revenue.

Report to Government where title proved.

88. If he prove his title to the satisfaction of the Settlement-officer, the case shall be reported to the Local Government, whose orders thereon shall be final.

Assessment and settlement on failure of proof.

89. If the title be not so proved, the Settlement-officer shall proceed to assess the land, and to make the settlement of it with the person in actual possession as proprietor.

Form and attestation of record-of-rights.

90. The Board shall, from time to time, prescribe the form in which the record to be made under the provisions of this chapter shall be drawn up, and the manner in which it shall be attested.

Presumption as to entries.

91. All entries in the record so made and attested shall be presumed to be true until the contrary is proved.

Confirmation of settlement.

92. No settlement shall be considered final until it has been confirmed by the Local Government.

Period for which settlement is to be made.

The Local Government shall, at some time before confirming the settlement, fix the period for which the settlement is to be made.

Such period shall be fixed with reference to the agricultural year.

Revision of assessment before confirmation.

The assessment may be revised, if the Local Government so directs, at any time before it is confirmed, and in such case the revised assessment shall be proposed to the proprietors, and the provisions of sections 43 to 91 (both inclusive) shall apply.

Power to invest officer with Settlement-officer's powers.

93. At any time during the currency of a settlement, the Local Government may invest any officer with all or any of the powers of an officer in charge of a settlement under this Act within such limits, and with such restrictions, and for such period, as it thinks fit:

But not so as to enable him to enhance the total amount of revenue payable on account of any mahál except in respect of land added thereto or becoming liable to payment of revenue since the confirmation of the settlement.

No officer so invested shall alter the classification of tenants made under this Act except on the application of a party concerned.

CHAPTER IV.

REGISTRATION AND MAINTENANCE OF RECORDS.*

Collector to maintain record-of-rights, and register changes,

94.† The Collector of the district shall keep and maintain the record-of-rights;

and he shall, from time to time, cause to be registered all changes that may take place, and anything that may affect any of the rights or interests recorded;

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* See *North-Western Provinces Gazette*, 3rd February 1877, p. 107.

† S. 94 has been extended to the Kumáon and Garhwál Districts.—See Notification No. 1747, dated Nov. 2, 1876, in *Gazette of India*, 1876, Pt. I., p. 606, published as No. 567A, dated Dec. 5, 1876, in *N.-W. P. Gazette*, 1876, p. 1549.

and correct errors.

and shall correct any errors which the parties interested admit to have been made in the record.

95.* The Board shall order such registers to be kept up as may be necessary for the purposes of the last preceding section: and "no such change or other thing affecting proprietary rights or interests" † shall be recorded without the order of the Collector of the district or Assistant Collector.

Power to order what registers shall be kept.

Changes to be duly authorized.

96.* The Local Government may prescribe proper fees for mutations in the registers: Provided that no fee for a single mutation shall exceed one hundred rupees.

Power to prescribe fees for mutations.

Such fees shall be levied from the person in whose favour the mutation is made, and shall be expended in such manner as the Local Government thinks fit.

Levy of fees.

Appropriation.

97.* All persons succeeding to any proprietary right in a mahál, or the profits thereof, whether by inheritance, purchase, gift, or other form of transfer, shall notify the same, immediately after it has taken place, to the tahsildár of the tahsil in which the mahál is situated, and the tahsildár shall report such notice to the Collector of the district or the Assistant Collector.

Successions to proprietary rights to be notified.

98.* The Collector of the district or Assistant Collector, on receiving such report, shall make such enquiry as appears necessary to ascertain the truth of the alleged succession to, or transfer of, the property, and if the succession or transfer appears to have taken place, he shall record the same in the register:

Procedure on notification.

Provided that no such entry shall be held to affect the rights of any other person who may claim and establish in any Civil or Revenue Court any interest in the land to which the entry has reference.

Saving of rights of other persons interested.

99.‡ If the person so succeeding is a minor or otherwise disqualified, the guardian or other person who has charge of his property shall make the notification required by section 97.

Notification in case of minority or other disqualification.

100 ‡ Any person neglecting to make the notification required by sections 97 and 99 within three months from the date of the transfer having taken place shall be liable, at the discretion of the Collector of the district or Assistant Collector, to a fine not exceeding five times the amount of the fee which would otherwise have been payable under section 96.

Fine for neglect to notify.

101.‡ If, in the course of inquiry made under section 98, a dispute regarding the possession of the property arises, and the Collector of the district or Assistant Collector is unable to satisfy himself as to which party is in possession, he shall ascertain, by summary enquiry, who is the person best

Power to put one party in possession in certain cases of dispute.

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* Ss. 95 to 98 have been extended to the Kumáon and Garhwál Districts.—See Notification No. 973, dated July 26, 1878, in *Gazette of India*, 1878, Pt. I., p. 453, and *N.-W. P. and Oudh Gazette*, 1878, p. 1113.

† The words quoted have been substituted for the words "no such changes" by Act VIII. of 1879. s. 10.

‡ Ss. 99 to 101 have been extended to the Kumáon and Garhwál Districts.—See Notification No. 1378, dated Aug. 16, 1887, in *Gazette of India*, 1887, Pt. I., p. 428, and *N.-W. P. and Oudh Gazette*, 1887, Pt. I., p. 384.

Act XIX. of 1873.

entitled to the property, and shall put such person in possession, and make the necessary entry in the record accordingly, subject to any order that may be subsequently passed by the Civil Court.

Registry of transfers of non-proprietary interests in land.

102. The transfers of all interests in land, other than those referred to in section 97, shall be recorded by the kanungo and patwárí in such manner as the Board from time to time directs ;

and all disputed cases shall be reported to the Collector of the district or Assistant Collector, who shall make such enquiry as may be necessary to ascertain the truth, and cause the record to be amended accordingly.

Enquiry in disputed cases.

Annual enquiry as to revenue-free grants.

103. The Collector of the district or Assistant Collector shall enquire annually into the cases of all land released conditionally or for a term from the payment of revenue.

If the condition be broken, he shall report the case through the Commissioner of the Division to the Board for orders ;

and if the term has expired, or (where the grant is for the life of the grantee) if the grantee has died, he shall assess the land, and report his proceedings through the Commissioner of the Division to the Board for sanction.*

Assessment of land added by alluvion.

104. All land added by alluvion to a mahál is liable to assessment. Such land may be assessed and settled under rules to be framed under section 257.

Collector and Assistant Collector to have powers of officer in charge of settlement.

105. For the purposes of sections 103 and 104 the Collector of the district and Assistant Collector shall each have the powers of an officer in charge of a settlement.

Inspection of records.

106. All records kept under this Act shall be open to public inspection at such hours and on such conditions as to fees or otherwise as the Local Government may from time to time prescribe.†

Partition and Union of Mahals.

Partitions.

'Perfect partition.'

'Imperfect partition.'

107. Partition is either perfect or imperfect.

'Perfect partition' means the division of a mahál into two or more mahals.

'Imperfect partition' means the division of any property into two or more properties jointly responsible for the revenue assessed on the whole.

Persons entitled to perfect partition.

108. Any recorded co-sharer in a mahál, and any person in whose favour a decree has been passed by any Civil Court, awarding to him the proprietary right in a portion of a mahál, whether such portion consists of a fractional share in the whole or a part of the mahál, or of specific lands, is entitled to claim perfect partition of his share.

Any two or more recorded co-sharers may claim that their shares be divided from the other shares by a perfect partition, and be held by them as a single mahál.

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* Assessment of lands previously released from payment of revenue.—*North-Western Provinces Gazette*, 27th March 1875, p. 424.

† See *North-Western Provinces Gazette*, 28th November 1874, pp. 1957, 1958; *ibid*, 2nd October 1875, p. 1388 (rule x.).

109. Applications for perfect partition are to be made in writing to the Collector of the district or the Assistant Collector in charge of the sub-division of the district in which the mahál is situated; Act XIX. of 1873.

Applications for perfect partition.

and shall be accompanied by a certified copy of the record showing the share held by the applicant in the mahál:

Provided that, if the mahál be situated in two or more districts, the application may be made in any one of those districts, and the partition shall be made by such one of the Collectors of those districts as the Board may direct.

Provisions as to estates situated in more than one district;

110. If the mahál is situated in two or more sub-divisions of a district, the partition shall be made by such one of the Assistant Collectors respectively in charge of such sub-divisions as the Collector of the district may direct.

and as to estates in more than one sub-division.

111. The Collector of the district or Assistant Collector, on receiving an application for partition, shall, if the application be in order, and not open to objection on the face of it, publish a notification of the same at his office, and at some conspicuous place on the mahál to which the application relates,

Notification of application.

and shall serve a notice on all such of the recorded co-sharers in the mahál as have not joined in the application, requiring any co-sharer in possession who may object to the partition to appear before him to state his objection, either in person or by a duly-authorized agent, on a day to be specified in the notice, not being less than thirty or more than sixty days from the date on which such notice was issued.

Notice to co-sharers not joining.

Where, from any cause, notice cannot be personally served on any co-sharer, the notification shall be deemed sufficient notice under this section.

Notification when alone sufficient.

112. If, on or before the day specified, any objection is made to the partition by any co-sharer in possession, and the Collector of the district or Assistant Collector, on a consideration of such objection, is of opinion that there is any good and sufficient reason why the partition should be absolutely disallowed, he may refuse the application, recording the grounds of his refusal.

Power to refuse partition when objection admitted.

113. If the objection raises any question of title, or of proprietary right, which has not been already determined by a Court of competent jurisdiction, the Collector of the district or Assistant Collector may either decline to grant the application until the question in dispute has been determined by a competent Court, or he may proceed to inquire into the merits of the objection.

Procedure if question of title be raised.

In the latter case the Collector of the district or Assistant Collector, after making the necessary inquiry, and taking such evidence as may be adduced, shall record a proceeding declaring the nature and extent of the interests of the party or parties applying for the partition, and any other party or parties who may be affected thereby.

The procedure to be observed by the Collector of the district or Assistant Collector in trying such cases shall be that laid down in the Code of Civil Procedure* for the trial

Procedure in such cases.

* This reference should now be read as applying to Act XIV. of 1882. See s. 3 of that Act.

Act XIX. of 1873.

of original suits, and he may, with the consent of the parties, refer any question arising in such case to arbitration, and the provisions of Chapter XXXVII.* (relative to arbitrators) of the same Code shall apply to such references.

Reference to arbitration.

114. All orders and decisions passed by the Collector of the district or Assistant Collector under the last preceding section, for declaring the rights of parties, shall be held to be decisions of a Court of Civil Judicature of first instance, and shall be open to appeal to the District or High Court, under the rules applicable to regular appeals to those Courts.

Collector's decision equivalent to decision of Civil Court.

Appeal thereupon.

Upon such appeal being made, the District or High Court, as the case may be, may issue a precept to the Collector of the district or Assistant Collector, desiring him to stay the partition pending the decision of the appeal.

Appellate Court may stay partition.

115. From every decision passed under section 114 by a District Court, a special appeal shall lie to the High Court, under the rules for the time being in force relating to special appeals to that Court.

Special appeal to High Court.

116. When it has been decided to make a partition under this chapter, the Collector of the district or Assistant Collector may give the parties the option of making the partition themselves, or of appointing arbitrators for the purpose; or he shall make the partition himself, or cause it to be made by any Assistant Collector subordinate to him.

Option to parties to make partition themselves, or to appoint arbitrators.

If arbitrators are appointed, the provisions of sections 220 to 231, both inclusive, shall apply.

117. In making partitions, the Collector of the district or Assistant Collector, and any person appointed by him, shall have the same powers to enter on the land under partition, for making out the boundaries, surveying the mahál, and other purposes, as have been conferred on Settlement-officers under Chapter III.

Power to enter on land for purposes of partition.

118. Where there are no lands held in common, the lands held in severalty by the applicant for partition shall be declared a separate mahál, and shall be separately assessed to the Government revenue.

Partition of lands held only in severalty.

119. Where some of the lands are held in common, the Collector of the district or Assistant Collector shall allot to the applicant for partition his share of such lands in accordance with village-custom, if any such exist.

Partition of lands some of which are held in common.

If no such custom exist, the Collector of the district or Assistant Collector shall make such division as may secure to the applicant his fair portion of the common lands.

120. The portion of the common lands falling by such partition to the share of the applicant shall be added to the land held by him in severalty, and the maháls thus formed shall be assessed and declared separate maháls.

Formation of separate maháls from shares allotted in partition.

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* The reference to Ch. VI. of Act VIII. of 1859 is altered in accordance with Act XIV. of 1882, s. 3.

121. In making partitions under sections 118, 119, and 120, the Collector or Assistant Collector shall give effect to any transfer of lands held in severalty, forming part of the mahál agreed to by the parties, and made previous to the declaration of the partition. Act XIX. of 1873.

Transfers to be effectuated in making partition.

122. Where all the lands are held in common, theCollector of the district or Assistant Collector shall make such a partition as may secure to the applicant his fair share of the mahál.

Partition where all lands held in common.

123. In all cases each mahál shall be made as compact as possible: Provided that, except with the sanction of the Board, no partition be disallowed solely on the ground of incompactness.

Mahálsto be compact; partition not disallowed for incompactness.

124. If, in making the partition, it be necessary to include in the mahál assigned to one sharer the land occupied by a dwelling-house or other building in the possession of another co-sharer, such other co-sharer shall be allowed to retain it, with any buildings thereon, on condition of his paying a reasonable ground-rent for it to the sharer into whose portion it may fall.

Rule when dwelling-house of one sharer is included in mahál assigned to another.

The limits of such land, and the rent to be paid for it, shall be fixed by the Collector of the district or Assistant Collector.

125. No sír-land belonging to any co-sharer shall be included in the mahál assigned on partition to another co-sharer, unless with the consent of the co-sharer who cultivates it, or unless the partition cannot otherwise be conveniently carried out.

Rule as to sír-land of one sharer being included in mahál assigned to another.

If such land be so included, and after partition such co-sharer continue to cultivate it, he shall be an occupancy-tenant of such land, and his rent shall be fixed by order of the Collector of the district or of the Assistant Collector.

126. Tanks, wells, water-courses, and embankments shall be considered as attached to the land for the benefit of which they were originally made.

Rule as to tanks, wells, water-courses, and embankments.

Where, from the extent, situation, or construction of such works, it is found necessary that they should continue the joint property of the proprietors of two or more of the mahálsinto which the mahál may be divided, the Collector of the district or Assistant Collector shall determine the extent to which the proprietors of each mahál may make use of the said works, and the proportion of the charges for repairs of such works to be borne by such proprietors respectively, and the manner in which the profits, if any, derived from such works, shall be divided.

127. Places of worship and burial-grounds, held in common previous to the partition of a mahál, shall continue to be so held, unless the parties otherwise agree among themselves.

Rule as to places of worship and burial-grounds.

In such cases they shall state in writing the agreement into which they have entered, and such writing shall be filed with the record.

Act XIX. of 1873.

Determination of revenue payable by each division of a mahál.

128. The amount or revenue to be paid by each portion of the divided mahál shall be determined by the Collector of the district or Assistant Collector, provided that the aggregate revenue of the new maháls shall not exceed the revenue assessed on the mahál immediately before partition,

and the proprietors of the new maháls shall be held liable for the portions of the revenue severally assessed on their maháls, whether new engagements be taken from them or not.

Liability of proprietors.

Power to make rules as to costs.

129. The Board shall make rules for determining the costs of partitions under this Act and the mode in which such costs are to be apportioned:

Provided that the cost of surveying a mahál, when such survey is necessary for the purpose of partition, shall be paid rateably by all the co-sharers of the mahál according to their shares therein.

Cost of survey.

Case may be struck off for default as to costs.

130. If the costs to be paid by the applicant for partition are not paid within a time to be fixed by the Collector of the district or Assistant Collector, the case may be struck off the file.

Power to stay partition.

And if at any stage of the proceedings there appears to be any reason for stopping the partition, the Collector of the district may, of his own motion, or on the report of the Assistant Collector making the partition, stay the partition, and order the proceedings to be quashed.

Partitions to be made or confirmed by Collector, and notified to parties.

131. Every partition shall either be made by the Collector of the district, or, if made by an Assistant Collector, be reported to the Collector of the district for his sanction and confirmation;

and on completion of a partition, the Collector of the district shall publish a notification of the fact at his office and at some conspicuous place on each of the new maháls, or in the village of which they form part;

When to take effect.

and it shall take effect from the first day of July next after the date of such notification.

Appeal to Commissioner from orders of Collector.

132. An appeal against the decision of the Collector of the district making or confirming a partition shall lie to the Commissioner of the Division within one year from the date on which such partition takes effect.

Power to order new allotment of revenue on proof of fraud or error in first distribution.

133. Where the public revenue is fraudulently or erroneously distributed at the time of the partition, the Local Government may, within twelve years from the time of discovery of the fraud or error, order a new allotment of the public revenue upon the several maháls into which the mahál has been divided, on an estimate of the assets of each mahál at the time of the partition, to be made conformably to the best evidence and information procurable respecting the same.

Making of imperfect partitions.

134. Imperfect partition shall be carried out according to the provisions of the preceding sections, so far as they are applicable:

Provided that no application for imperfect partition shall be entertained unless the consent of all the recorded co-sharers in the property of which partition is sought be first obtained.

Consent required.

Civil Courts barred from entertaining applications for partition.

135. No Civil Court shall entertain any suit or application for perfect or imperfect partition.

136. If two or more revenue-paying mahâls have originally formed portion of the same village, the proprietors shall be entitled to have such mahâls united, and to hold them as a single mahâl.

Union of mahâls originally part of same village.

137. Every application for the union of such mahâls shall be made in writing to the Collector of the district or Assistant Collector in charge of the sub-division of the district in which the mahâls are situate.

Application for such union.

138. If the Collector of the district or Assistant Collector, as the case may be, see no objection, he shall comply with the application, and cause the necessary entries to be made in the records of his office, reporting the case to the Commissioner of the Division.

How to be dealt with.

139. The provisions of this chapter, so far as they are applicable, may be applied by the order of the Collector of the district to the partition or union of mahâls held free of revenue.

Application of chapter to partition or union of revenue-free mahâls.

Maintenance of Boundaries.

140.* The Collector of the district, Assistant Collectors, and their subordinates, shall have power to enter upon and survey land, and to demarcate the boundaries of mahâls, villages, or fields.

Power to enter and survey land and mark boundaries.

141.* All owners of mahâls, villages, or fields, are bound to maintain and keep in repair at their own cost the boundary-marks lawfully erected thereon.

Obligations of owners as to boundary-marks.

"*Explanation.*—'Owners' in this and the following sections of this chapter include also a lessee, mortgagee, or other person in possession of the land referred to."†

142.* Any person convicted before a Collector of the district or Assistant Collector of wilfully erasing, removing, or damaging, such boundary-marks, may be ordered by the convicting officer to pay such sum, not exceeding fifty rupees, for each mark so erased, removed, or damaged, as may be necessary to defray the expense of restoring the boundary-marks so erased, removed, or damaged, and of rewarding the informer through whom the conviction was obtained.

Penalty for erasing, removing, or injuring marks.

143.* Whenever the person erasing, removing, or damaging any such mark cannot be discovered, or if, for any other reason, it is found impracticable to recover from him the sum which he has been so ordered to pay, the mark shall

Who to be charged for re-erection and repair when offenders not discoverable.

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* Ss. 140 to 145 have been extended to the Kumâon and Garhwâl Districts.—See Notification No. 1747, dated Nov. 2, 1876, in *Gazette of India*, 1876, Pt. I., p. 606, published as No. 567 A, dated Dec. 5, 1876, in *N.-W. P. Gazette*, 1876, p. 1549.

† This explanation has been added by Act. VIII. of 1879, s. 11.

Act XIX. 1873.

be re-erected or repaired at the charge of the owner or owners of such one or more of the conterminous fields or maháls as to the Collector of the district or Assistant Collector seems fit.

Powers of Collector as to boundary-disputes and boundary-marks.

144.* The Collector of the district or Assistant Collector may decide, on the basis of possession, all disputes concerning boundaries, and may at any time direct the owners of maháls, villages, or fields, by written notice served upon them—

(*a*) to cause proper boundary-marks to be erected on such maháls, villages, or fields,

(*b*) to repair the boundary-marks lawfully erected on such maháls, villages, or fields.

In default of their compliance with such direction within fifteen days from the date of the service of the notice, the Collector of the district or Assistant Collector shall cause such boundary-marks to be erected or repaired, as the case may be, and shall charge the cost of such erections or repairs to the owners of the conterminous villages, fields, or maháls, in such proportion as he thinks fit.

Recovery of fees, fines, and costs.

145.* All fees, fines, costs, and other sums ordered to be paid under this chapter shall be recoverable as an arrear of revenue.

CHAPTER V.†

COLLECTION OF LAND-REVENUE.

Responsibility for revenue.

146. In the case of every mahál the entire mahál and all the proprietors jointly and severally shall be responsible to Government for the revenue for the time being assessed on the mahál.

"*Explanation.*—'Proprietor' in this chapter includes also a farmer and a mortgagee in possession."‡

Board may make rules as to payment of revenue.

147. The Board may, with the previous sanction of the Local Government, from time to time make rules as to the instalments in which, and the persons, places, and times to whom and at which, the revenue payable in respect of any land shall be paid.

Until the issue of such rules, the said revenue shall be paid in the instalments, to the persons, and at the times and places, in which, to whom, and at which, it is now paid.§

Arrear. Defaulters.

148. Any sum not so paid becomes thereupon an arrear of revenue, and the persons responsible for it become defaulters.

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* Ss. 140 to 145 have been extended to the Kumáon and Garhwál Districts.—See Notification No. 1747, dated Nov. 2, 1876, in *Gazette of India*, 1876, Pt. I., p. 606, published as No. 567A, dated Dec. 5, 1876, in *N.-W. P. Gazette*, 1876, p. 1549.

† Chap. V. has been extended to the Kumáon and Garhwál Districts.—See Notification No. 1747, dated Nov. 2, 1876, in *Gazette of India*, 1876, Pt. I., p. 606, published as No. 567 A, dated Dec. 5, 1876, in *N.-W. P. Gazette*, 1876, p. 1549.

‡ This explanation has been added by Act VIII. of 1879, s. 12.

§ Instalments of revenue, *North-Western Provinces Gazette*, 27th March 1875, p. 415 : 11th November 1876, pp. 1454-1456 : 3rd February 1877, p. 107.

Interest not chargeable.

No interest shall be demanded on any arrear of land-revenue.

Default where settlement is with lambardár.

If the settlement has been made with a lambardár on behalf of the proprietary body, both the lambardár and the persons so responsible shall be deemed defaulters.

Certified account to be evidence as to arrear.

149. A statement of account certified by the tahsildár shall be conclusive evidence of the existence of the arrear, of its amount, and of the person who is the defaulter.

Process for recovery of arrears.

150. An arrear of revenue may be recovered by the following processes :—

(*a*) by serving a writ of demand (*dastak*) on any of the defaulters ;

(*b*) by arrest and detention of his person ;

(*c*) by distress and sale of his moveable property ;

(*d*) by attachment of the share, or patti, or mahál, in respect of which the arrear is due ;

(*e*) by transfer of such share or pattí to a solvent co-sharer in the mahál ;

(*f*) by annulment of the settlement of such pattí, or of the whole mahál ;

(*g*) by sale of such pattí, or of the whole mahál ;

(*h*) by sale of other immoveable property of the defaulter.*

When writs may issue.

151. Writs of demand may be issued on or after the day following that on which the arrear accrues.

Power to frame rules as to writs.

The Board shall, from time to time, frame rules for the issue of such writs, and fix the costs recoverable from the defaulter as an arrear of revenue, and direct by what officer such writs shall be issued.†

Arrest and detention of defaulter.

152. At any time after an arrear becomes due, the defaulter may be arrested and detained in custody for fifteen days, unless the arrear, together with the costs of arrest, is sooner paid.

Power of arrest by whom to be exercised.

The Board may, from time to time, declare by what officers or class of officers the powers of arrest conferred by this Act may be exercised.‡

Distress and sale of his moveable property.

153. The Collector of the district or Assistant Collector may, whether the defaulter has been arrested or not, distrain and sell his moveable property, with the exception of the implements of husbandry and cattle actually employed by him in agriculture,

Exceptions.

and, in the case of an artisan, of his tools.

Power to attach defaulter's land, and take it under direct management.

154. When an arrear of land-revenue has become due, the Collector of the district may, in addition to, or instead of, any of the other processes before specified, cause the share, or pattí, or mahál, in respect of which the arrear is due, to be attached and taken under the management of himself or any agent whom he appoints for that purpose.

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* Collection of revenue, *North-Western Provinces Gazette*, 27th March 1875, pp. 416, 417.

† Collection of revenue, *North-Western Provinces Gazette*, 27th March 1875, p. 416.

‡ *North-Western Provinces Gazette*, 27th March 1875, p. 417.

Act XIX. of 1873.

155. The Collector of the district, or the agent so appointed, shall be bound by all the engagements which existed between the person or persons who, immediately before the attachment, was or were in possession of the land attached, and the subordinate proprietors or tenants, if any;

Powers and obligations of manager.

and shall be entitled to manage the land attached, and to receive all rents and profits accruing therefrom to the exclusion of such person or persons, until the arrears of land-revenue due therefrom have been satisfied, or until the Collector of the district restores to the management thereof the person or persons whose interest has been attached.

156. All surplus profits of the land attached, beyond the cost of such attachment and management, including the payment of the current revenue, shall be applied in defraying the said arrear;

Application of surplus profits.

and no land shall be attached for the same arrears for a longer term than five years from the first day of July next after the attachment; provided that, if the arrear be sooner liquidated, the land shall be released, and the surplus receipts (if any) made over to the "defaulter or his legal representative."*

Limit to term of attachment.

157. When thear rear is due in respect of a share or pattí of a mahál, the Collector of the district may, with the previous sanction of the Commissioner of the Division, in cases where the annual revenue payable in respect of such share or pattí does not exceed fifty rupees, and in other cases with the previous sanction of the Board, transfer such share or pattí for a term not exceeding fifteen years from the first day of July next after the date of the sanction, to any or all of the other co-sharers, on condition of their paying such arrear, and on such terms as the Commissioner or Board (as the case may be) in each case may think fit.

Transfer of defaulter's share to co-sharers.

The Commissioner shall, without unnecessary delay, report to the Board every transfer sanctioned by him under this section, and the Board may thereupon set aside such transfer, or alter the terms of the same, or pass such other order as it thinks fit.

A transfer under this section shall not affect the joint and several liability of the co-sharers of the mahál in which it is enforced.†

158. When any arrear of land-revenue is due, and the Collector of the district is of opinion that the processes hereinbefore provided are not sufficient for the recovery of such arrear, he may, in addition to, or instead of, all or any of such processes, report, through the Commissioner of the Division, the matter to the Board, and the Board may thereupon order the existing settlement of the pattí or mahál, in respect of which the arrear is due, to be annulled.

When report may be made to Board, and settlement annulled.

The provisions of this section shall not be put in force for the recovery of any arrear of land-revenue which may have accrued on land,

Exception of certain arrears.

(*a*) while under attachment under section 154, or

(*b*) while under the charge of the Court of Wards.

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* The words quoted have been substituted for the word "proprietor" by Act VIII. of 1879, s. 13.

† This section has been substituted for the original by Act VIII. of 1879, s. 14.

159. When the settlement of any land has been annulled, the Collector of the district may, with the previous sanction of the Board, either manage the land himself or through an agent, or he may let it in farm to any person willing to accept the same for such term and on such conditions as may be sanctioned by the Board : Act XIX. of 1873.

When settlement annulled, Collector may manage land himself or by agent, or let it in farm.

Provided that the term for which land may be so held or farmed be not longer than fifteen years from the first day of July next after the date of such annulment.

And no contracts made by the persons who, immediately before the annulment of the settlement, were in possession of the lands comprised therein, or by the persons through whom they respectively claim, relating to such lands, shall, during such term, be binding on the Collector of the district, or his agent, or lessee.

Suspension of contracts.

160. When the Collector of the district attaches any land under section 154, or when the settlement of any land has been annulled under section 158, he shall make public proclamation thereof on the mahál.*

Proclamation of attachment or annulment of settlement.

161. No payment made after such proclamation on account of rent, or any other asset of the mahál, to any person other than the Collector of the district, or his agent, or lessee, shall be credited to the person making such payment, or relieve him from liability to payment to the Collector of the district, his agent, or lessee.

Payments thereafter to defaulter not to discharge payer.

162. No payment made to the defaulter, in anticipation of the usual period for the payment of the rents, shall, without the special sanction of the Collector, be credited to the person making the same in account with the Collector of the district or with the person to whom he gives possession.

Payments to defaulter in anticipation of due date.

163. When any land has been farmed for arrears of revenue, any balance of revenue due from the farmer may be recovered from him or his surety as an arrear of revenue under the provisions of this Act.

Recovery of revenue due from farmer.

164. Whenever the settlement of a portion of a mahál is annulled under section 158, the joint responsibility of the co-sharers for the revenue of such portion of the mahál subsequently becoming due shall be in abeyance until a new settlement of such portion is made under section 165.

Suspension of responsibility of co-sharers for revenue of portion of mahál as to which settlement is annulled.

165. After the expiration of the period, for which any land has been farmed or held, pursuant to section 159, under direct management, for the recovery of an arrear of revenue, the Collector of the district shall offer to the person entitled to be settled with under section 43 a new settlement, on such conditions as the Board may direct, for the remainder of the term of the settlement of the district; and, if he refuse such offer, the Collector of the district may (with the previous sanction of the Board) farm

Offer of settlement to proprietor on expiry of period for which land is farmed or taken under management.

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* Form of proclamation, *North-Western Provinces Gazette*, 27th March 1875, p. 417.

Act XIX. of 1873.

the land to some other person, or hold it under direct management under the provisions of sections 48, 49, 50, and 51 "for the remainder of the term of the settlement of the district, or for any period within such term as the Board may fix."*

Power to sell by auction defaulter's pattí or mahál.

166. When an arrear of land-revenue has become due, and the Collector of the district is of opinion that the other processes hereinbefore provided are not sufficient for the recovery of such arrear, he may, in addition to, or instead of, all or any of such other processes, and subject to the provision hereinafter contained, and with the previous sanction of the Board, sell by auction the pattí or mahál in respect of which such arrear is due:

Bar to sale for certain arrears.

Provided that no land shall be sold—

(*a*) for any arrear which may have accrued while it was under the charge of the Court of Wards, or was so circumstanced that the Court of Wards might have exercised jurisdiction over it under the provisions of section 194, clauses (*a*), (*b*), (*c*), (*d*), or (*e*);

(*b*) for any arrear which may have accrued while it was under attachment under section 154;

(*c*) for any arrear which may have accrued while it was held under direct management by the Collector of the district, or in farm by any other person, under section 48, 49, 159, or 165.

Land to be sold free of incumbrances.

167. Land sold under the last preceding section shall be sold free of all incumbrances;

and all grants and contracts previously made by any person other than the purchaser in respect of such land shall become void as against the purchaser at the auction-sale.

Grants and contracts void against purchaser.

Exceptions.

Nothing in the former part of this section applies—

(*a*) in districts or portions of districts permanently settled, to farms granted in good faith at fair rents, and for specified areas, by a former proprietor for terms not exceeding twenty years, under written leases duly registered;

(*b*) in all districts, to lands held under *boná-fide* leases at fair rents, temporary or perpetual, for the erection of dwelling-houses or manufactories, or for mines, gardens, tanks, canals, places of worship, burying-grounds, such lands continuing to be used for the purposes specified in such leases.

Power to proceed against interest of defaulter in property other than that in respect of which default is made.

168. If the arrear cannot be recovered by any of the above processes, and the defaulter owns any other mahál, or any share in any other mahál, or any other immoveable property, the Collector of the district may proceed against such mahál, or other immoveable property, as if it were the land on account of which the revenue is due, under the provisions of this Act:

Provided that no other interests save those of the defaulter alone shall be so proceeded against, and no incumbrances created or contracts entered into by him in good faith shall be rendered invalid by such proceeding.

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* The words quoted have been added by Act VIII. of 1879, s. 15.

169. On the receipt of the sanction of the Board to the sale of any land, the Collector of the district shall issue a proclamation, in the vernacular language of the district, of the intended sale, specifying the time and place of sale, Act XIX. of 1873.

Procedure in effecting sale.

and (when the land to be sold is a mahál or part of a mahál paying revenue to Government) the revenue assessed upon it together with any other particulars he may think necessary.

170. When the land is sold for arrears of revenue due thereon, the proclamation shall declare that the land is to be sold free of any incumbrance except the farms and leases (if any) mentioned in section 164.

Proclamation of sale.

Such proclamation shall be made at the head-quarters of the tahsíls in which the land is situate, and also in the village of which it is a part.

171. A written notice of the intended sale, and of the time and place thereof, shall be affixed in the office of the Collector of the district, and, where the Assistant Collector in charge of the sub-division in which the land is situate has a separate office, then also in such office, and a copy of such notice shall be served on the defaulter.

Notification of sale.

172. The sale shall be made either by the Collector of the district in person or by an Assistant Collector specially appointed by him in this behalf.

Sale by whom to be made.

No such sale shall take place on a Sunday or other authorized holiday, or until after the expiration of at least thirty days from the date on which the said notice thereof has been affixed in the office of the Collector of the district, and proclamation of the sale has been made in the village in which the land is situate.

Time when sale may be made.

The Collector of the district may, from time to time, postpone the sale, reporting such postponement to the Commissioner of the Division.

Postponement of sale.

" No officer having any duty to perform in connection with any such sale, and no person employed by, or subordinate to, such officer, shall, either directly or indirectly, bid for, acquire, or attempt to acquire, except on behalf of the Government or the Court of Wards, the property sold, or any interest therein."*

173. If the defaulter pay the arrear in respect of which the land is to be sold at any time before the day fixed for the sale, to the person appointed under section 147 to receive payment of the land-revenue assessed on such land, or to the Collector of the district, or the Assistant Collector in charge of the sub-division of the district in which the land is situate, the sale shall be stayed.

When sale may be stayed.

174. The person declared to be the purchaser shall be required to deposit immediately twenty-five per cent. on the amount of his bid, and in default of such deposit the land shall forthwith be again put up and sold.

Deposit by purchaser. Resale in default of deposit.

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* This paragraph has been added by Act VIII. of 1879, s. 16.

Act XIX. of 1873.

175. The full amount of purchase-money shall be paid by the purchaser before sunset of the fifteenth day from that on which the sale of the land took place, or, if the said fifteenth day be a Sunday or other authorized holiday, then on the first office-day after such fifteenth day ;

Purchase-money when to be paid.

and, in default of payment within such period, the deposit, after defraying thereout the expenses of the sale, shall be forfeited to Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property, or to any part of the sum for which it may be subsequently sold.

Effect of default.

176. If the proceeds of the sale which is eventually made be less than the price bid by such defaulting purchaser, the difference shall be leviable from him under the rules contained in the Code of Civil Procedure for enforcing payment of money in satisfaction of a decree of Court.

Liability of purchaser for loss by re-sale.

177. Every re-sale of land in default of payment of the purchase-money shall be made after the issue of a fresh notice in the manner prescribed for original sales.

Notification before re-sale.

178. Every sale of land under this Act shall be reported by the Collector of the district to the Commissioner of the Division.

Sale to be reported to Commissioner.

179. At any time within thirty days from the date of the sale, application may be made to the Commissioner of the Division to set aside the sale on the ground of some material irregularity or mistake in publishing or conducting it ;

Application to set aside sale.

but no sale shall be set aside on such ground unless the applicant proves to the satisfaction of the Commissioner that he has sustained substantial injury by reason of the irregularity or mistake complained of.

180. On the expiration of thirty days from the date of the sale, if no such application as is mentioned in the last preceding section has been made, or if such application has been made and rejected, the Commissioner of the Division shall make an order confirming the sale ;

Order confirming or setting aside sale.

and, if such application be made and allowed, the Commissioner shall make an order setting aside the sale.

Every order made under this section shall be final.

181. If no such application be made within the time allowed by section 179, all claims founded on the irregularity or mistake complained of shall, as against the Government, be barred.

Bar of claims against Government.

Nothing herein contained shall preclude the institution of a suit in a Civil Court for the purpose of setting aside a sale on the ground of fraud.

182. Whenever the sale of any land is set aside, the purchaser shall be entitled to receive back his purchase-money, with or without interest, in such manner as the Commissioner of the Division thinks fit.

Refund of purchase-money when sale set aside.

183. After a sale of land on which an arrear of revenue is due has been confirmed in manner aforesaid, the Collector of the district in which the land is situate shall put the person declared to be the purchaser into possession of the land, and shall grant him a certificate to the effect that he has purchased the land to which the certificate refers, and such certificate shall be deemed to be a valid transfer of such land, but need not be* registered as a conveyance.

On confirmation of sale, purchaser to be put in possession.

Certificate of purchase.

If the land has been sold on account of an arrear due on it, the certificate shall also state that it has been sold free of all incumbrances other than the farms and leases mentioned in section 167.†

184. The certificate shall state the name of the person declared at the time of sale to be the actual purchaser; and any suit brought, whether in a Civil or Revenue Court, against the certified purchaser on the ground that the purchase was made on behalf of another person not the certified purchaser, though by agreement the name of the certified purchaser was used, shall be dismissed with costs.

Bar of suits against certified purchaser.

185. When a sale of land under this Act has been confirmed, the proceeds of the sale shall be applied in the first place to defraying the expenses of the sale and to the payment of any arrears due in respect of such land at the date of the confirmation of such sale, and recoverable as an arrear of land-revenue,

Application of proceeds of sale.

and the surplus (if any) shall be paid to the person whose land has been sold;

or, if the land sold were held in shares, then to the co-sharers collectively, or according to the amount of their recorded interests, at the discretion of the Collector of the district.

186. Such surplus shall not (except under an order of a Civil Court) be payable to any creditor of the person whose land has been sold, nor shall it (except under a like order) be retained in the Government treasury.

Surplus not to be paid to creditors, nor retained by Government, except under order of Court.

187. The person named in the certificate of title as purchaser of any land shall be liable for all instalments of land-revenue becoming due in respect of such land subsequently to the date of the confirmation of the sale.

Liability of purchaser for revenue.

188. Where any land sold under section 166 is a pattí of a mahál, any recorded co-sharer, not being himself in arrear with regard to such land, may, if the lot has been knocked down to a stranger, claim to take the said land at the sum last bid:

Pre-emption by co-sharer when land sold is a pattí of a mahál.

Provided that the said demand of pre-emption be made on the day of sale, and before the officer conducting the sale has left the office for the day, and provided that the claimant fulfil all the other conditions of the sale.

189. Whenever proceedings are taken under this chapter against any person for the recovery of any arrear of revenue, he may pay the amount claimed under protest to the officer taking such proceedings,

Payment under protest and suit for recovery.

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* The words "stamped or" have been repealed by Act I. of 1879 (the new Stamp Act).

† Form of certificate, *North-Western Provinces Gazette*, 27th March 1875, p. 418.

*Act XIX. of 1873.

and upon such payment the proceedings shall be stayed,

and (subject to the pecuniary limitations prescribed by law) the person against whom such proceedings were taken may sue the Government for the amount so paid in any Civil Court situate in the district where such proceedings were taken ;

and in such suit the plaintiff may, notwithstanding section 149, give evidence of the amount which he alleges to be due from him.

"No protest under this section shall be of any effect unless it is made at the time of payment in writing, and signed by the person making the same, or by an agent duly authorized in his behalf."*

Proprietor of mahál attached, &c., holding sír-land therein, to be recorded as ex-proprietary tenant.

190. Any proprietor of a mahál or portion of a mahál that is attached, transferred, held under direct management, farmed, or sold under the provisions of this Act, who may hold sír-land in such mahál or portion, shall be recorded as an ex-proprietary tenant of such sír-land ; and the rent to be paid by him for such land shall be fixed by the Collector of the district or Assistant Collector accordingly.

Tenure of land under expired settlement until new settlement is made.

191. If the term for which any settlement has been made expires before a new settlement is made, all persons with whom a settlement has been made, who continue after the expiration of such term to occupy the land comprised in the expired settlement, shall, until a new settlement is made, hold the said land upon the conditions of the expired settlement.

Existing record-of-rights.

In all cases the existing record-of-rights shall remain in force until a new record-of-rights is made.

Provisions applied to arrears due at commencement of Act.

192. The provisions of this Act with regard to the recovery of arrears of revenue shall apply to all arrears of land-revenue and sums of money recoverable as arrears of land-revenue, and due when this Act comes into force.

CHAPTER VI.†

COURT OF WARDS.

Board to have powers of Court of Wards.

193. The Board shall have the powers of a Court of Wards for the superintendence of the persons and property of all proprietors of mahals or parts of mahals who are disqualified for the management of their own "property," ‡ or who are put under the charge of the Collector of the district by order of a Civil Court under the provisions of any Act for the time being in force.

Proprietors when disqualified for management of their lands.

194. Proprietors shall be held disqualified to manage their own "property" ‡ when they are—

* This paragraph has been added by Act VIII. of 1879, s. 17.

† Chap. VI. has been extended to the Kumáon and Garhwál Districts.—See Notification No. 1747, dated Nov. 2, 1876, in *Gazette of India*, 1876, Pt. I., p. 606, published as No. 567A, dated Dec. 5, 1876, in *N.-W. P. Gazette*, 1876, p. 1549.

‡ The word "property" has been substituted for the word "lands" by Act VIII. of 1879, s. 18.

(*a*) females deemed by the Local Government incompetent to manage their estates; Act XIX. of 1873.

(*b*) minors;

(*c*) idiots;

(*d*) lunatics;

"(*e*) persons declared by the Local Government incapable, owing to physical defects and infirmities, to manage their own estates."*

(*f*) persons convicted of a non-bailable offence, and disqualified, in the opinion of the Local Government, by vice or bad character, from managing their estates;

(*g*) persons declared by the Local Government, on their own application, to be disqualified from managing their estates.

195. The Court of Wards may, in its discretion, assume, or refrain from assuming, the superintendence of the persons or property of any disqualified proprietor, and may, at any time, release any person or property from its superintendence:

Power to Court of Wards to decline superintendence.

"Provided that, if the person or property of any disqualified proprietor mentioned in section 194, clause (*b*), clause (*c*), or clause (*d*), has been placed under the charge of the Collector, or under the superintendence of the Court of Wards, by any Civil Court, it shall not be released without the concurrence of such Court:†

Proviso as to person or property placed under superintendence.

"Provided also that the property of a proprietor who has been held disqualified under the same section, clause (*a*), clause (*e*), clause (*f*), or clause (*g*), shall not be released from the superintendence of the Court of Wards without the previous sanction of the Local Government."†

196. The Collector of the district shall ascertain and report to the Court of Wards, from time to time, what proprietors may come within the description of disqualified landholders under section 194;

Collector to report what proprietors are disqualified.

and the Court of Wards shall, on receipt of the report of the Collector, make such order as may seem to it expedient.

197. Nothing in section 196 shall prevent the Court of Wards or the Local Government from putting the provisions of this chapter in force without any report from the Collector.

Power to enforce provisions of this chapter without report.

198. If, in any case not specially provided for by this or any other law in force for the time being, the right of the Court of Wards to assume or retain the superintendence of the person or property of a disqualified proprietor is disputed by such proprietor, or, if he be a minor, by some person on his behalf, the case shall be reported to the Local Government, whose orders thereon shall be final.

Report to Government when Court of Wards' right of superintendence is disputed.

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* This clause has been substituted for the original one by Act VIII. of 1879, s. 19.

† These two provisos have been substituted for the original one by Act VIII. of 1879, s. 20.

Act XIX. of 1873.

Appointment, removal, and control of managers and guardians.

199. The Court of Wards may appoint managers of the property of disqualified proprietors; and, if such proprietors be minors, idiots, or lunatics, the Court of Wards may appoint guardians for the care of their persons, and may remove and control such managers and guardians.

Proprietors may appoint guardians for their heirs, if disqualified, by will executed and attested in manner required by the Indian Succession Act, 1865; but such appointments shall not be valid till confirmed by the Court of Wards.

Powers of Court of Wards as to male minors within jurisdiction.

200. The Court of Wards may, "from time to time, determine what sums shall be allowed in respect of the expenses of any person whose property is under its superintendence, and"* direct where all male minors under its jurisdiction shall reside for the purpose of education or otherwise.

Powers of manager.

201. The manager appointed by the Court of Wards shall have power to collect the rents of the land entrusted to him as well as all other money due to the disqualified proprietor, and to grant receipts therefor;

and he may, subject to the control of the Court, grant or renew such leases and farms, not being for a longer period than five years, as may be necessary for the good management of the property.

Duties of manager.

202. The manager shall manage the property committed to him diligently and faithfully for the benefit of the proprietor, and shall, in every respect, act to the best of his judgment for the proprietors' interest as if the property were his own.

Powers of Court of Wards as to property under its charge.

203. The Court of Wards shall have power to give such leases or farms of the whole or parts of the property under its charge, and to mortgage or sell "the whole or"† any part of such property, and to do all such other acts as it may judge to be most for the benefit of the property and the advantage of the disqualified proprietors.

Exercise of their power by Court of Wards through others.

204. The Court of Wards may exercise all powers conferred on it by this Act through the Collectors of the districts in which any part of the property of its wards may be situated, or through any other person whom it may appoint for such purpose.

Suits by and against disqualified proprietors in Civil Courts.

205. All disqualified proprietors whose property is in charge of the Court of Wards, and for whom guardians have been appointed, shall sue and be sued in Civil Courts by and in the name of their guardians:

Provided that no such suit shall be instituted, defended, compromised, or otherwise dealt with by any such guardian without the previous sanction of the Court of Wards.

Disqualified proprietors, whose property is in charge of the Court of Wards, and for whom guardians have not been appointed, shall sue and be

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* The words quoted have been inserted by Act VIII. of 1879, s. 21

† The words quoted have been inserted by Act VIII. of 1879, s. 22.

sued in Civil Courts by and in the name of the Collector of the district in which the suit is brought.* Act XIX. of 1873.

Suits and proceedings in Revenue Courts.

205A. A manager appointed by the Court of Wards may, subject to the control of the Collector, institute, defend, compromise, or otherwise deal with, suits, applications, or other proceedings in Revenue Courts relating to the property entrusted to him.†

Disability of disqualified proprietors.

205B. Persons whose property is under the superintendence of the Court of Wards shall not be competent to create, without the sanction of the Court, any charge upon, or interest in, such property, or any part thereof.

And no such property shall be liable to be taken in execution of a decree made in respect of any contract entered into by any such person while his property is under such superintendence.†

Rules relating to managers.

206. Every manager appointed by the Court of Wards shall—

(*a*) give such security as the Court of Wards thinks fit, duly to account for what he shall receive in respect of the rents and profits of the property for which he is appointed ;

(*b*) pass his accounts at such periods and in such form as the Court of Wards directs ;

(*c*) pay the balance due from him thereon ;

(*d*) apply for the sanction of the Court of Wards to any act which may involve the property in expense not previously sanctioned by such Court ;

(*e*) be entitled to such allowance as the Court of Wards thinks fit for his care and pains in the execution of his duties ;

(*f*) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

CHAPTER VII.

PROCEDURE OF REVENUE COURTS.

Place for holding Court.

207. A Commissioner of a Division may hold his Court at any place within his Division that he thinks fit.

A Collector of a district, an Assistant Collector (whether in charge, or not in charge, of a sub-division of a district), or an officer in charge of a settlement or Assistant Settlement-officer, may hold his Court at any place within the limits of the district to which he is appointed.

A tahsildár may hold his Court at any place within the limits of his tahsil.

Power to summon persons to give evidence, and produce documents.

208. Any officer mentioned in section 207 shall have power to summon any person whose attendance he considers necessary for the purpose of any investigation, suit, or other business before him.

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* This section has been substituted for the original one by Act VIII. of 1879, s. 23.

† These two sections have been inserted by Act VIII. of 1879, s. 24.

Act XIX. of 1873.

All persons so summoned shall be bound to attend, either in person or by an authorized agent, as such officer may direct,

and to state the truth upon any subject respecting which they are examined or make statements,

and to produce such documents and other things as may be required.

Summons to be in writing, signed, and sealed.

209. Every summons shall be in writing in duplicate, and shall be signed and sealed by the officer issuing it, or by such person as he empowers in this behalf,

Mode of service.

and shall be served by tendering or delivering a copy of it to the person summoned, or, if he cannot be found, by affixing a copy of it to some conspicuous part of his usual residence.

Service in district other than that of issuer.

210. If his usual residence be in another district, the summons may be sent by post to the Collector of that district, who shall serve it in accordance with the preceding section.

Mode of serving notices.

211. Every notice under this Act may be served, either by tendering or delivering a copy thereof to the person on whom it is to be served ;

or, if such person is a proprietor of land, to his agent,

or by affixing a copy thereof to some conspicuous place on the land to which such notice refers.

Notice not void for error.

No such notice shall be deemed void on account of any error in the name or designation of any person referred to therein, unless when such error has produced substantial injustice.

Procedure for procuring attendance of witnesses.

212. In any suit ,"or other proceeding"* instituted before any officer mentioned in section 207, if either party desires the attendance of witnesses, he shall follow the procedure prescribed by the Code of Civil Procedure, section 151.

Hearing in absence of party neglecting to attend, and order *ex parte* or by default.

213. Whenever any party to the suit or matter under investigation neglects to attend on the day specified in the summons, the suit or matter may be heard and determined in his absence, and an order passed by default, or *ex parte*, as the case may be.

No appeal from certain orders.

214. No appeal shall lie from an order passed *ex parte*, or by default.

Re-hearing on proof of good cause for non-appearance.

But in all such cases, if the party against whom judgment has been given appears either in person or by agent (if a plaintiff within fifteen days from the date of such order, and if a defendant within fifteen days after any process for enforcing the judgment has been executed, or at any earlier period), and shows good cause for his non-appearance, and satisfies the officer making the order that there has been a failure of justice, such officer may, upon such terms as to costs or otherwise as he thinks proper, re-investigate the case, and alter or rescind the order according to the justice of the case :

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* The words quoted have been inserted by Act VIII. of 1879, s. 25.

Order not to be altered without summons to adverse party.

Provided that no such order shall be reversed or altered without previously summoning the party in whose favour judgment has been given to appear and be heard in support of it.

Mode of taking evidence in certain cases.

215. In all cases coming under sections 101, 103, 112, 113, 126, 142, and 144, the evidence shall be taken down in full in writing in the language in ordinary use in the district, by, or in the presence and hearing, and under the personal superintendence and direction, of, the officer making the investigation, and shall be signed by him.

In cases in which the evidence is not taken down in full in writing by the officer making the investigation, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes; and such memorandum shall be written and signed by such officer with his own hand, and shall form part of the record.

If such officer is prevented from making a memorandum as above required, he shall record the reason of his inability to do so.

The Local Government may declare what shall, for the purpose of this section, be deemed to be the language in ordinary use in any district.

Taking evidence given in English.
Translation to be on record.

216. When the evidence is given in English, such officer may take it down in that language with his own hand, and an authenticated translation of the same in the language in ordinary use in the district shall be made, and shall form part of the record.

Taking evidence in other cases.

217. In all cases other than those specified in section 215, such officer may either cause the evidence to be taken down in full as aforesaid, or may make a memorandum in his mother-tongue of the substance of the evidence of each witness as the examination of such witness proceeds.

Memorandum to be in writing signed.

Such memorandum shall be written and signed by such officer with his own hand, and shall form part of the record.

Writing and explanation of decisions.

218. All decisions under this Act shall be written by the officer passing the same in his own handwriting, and shall be explained by him in open Court to the parties or their agents.

Hearing and decision.
Notice to parties.

Every hearing and decision shall be in open Court, and the parties or their authorized agents shall have due notice to attend.

Sections applied to proceedings in Revenue Courts.

219. Sections 212 to 218 (both inclusive) shall apply to proceedings of a judicial nature in Revenue Courts.

REFERENCE TO ARBITRATION.

Reference to arbitration.

220. A Commissioner of a Division, a Collector of a district, an Assistant Collector of the first class, an officer in charge of a settlement, or an Assistant Settlement-officer, may, with the consent of the parties, by order, refer any dispute before him to arbitration;

Act XIX. of 1873.

and an officer in charge of a settlement or an Assistant Settlement-officer may, by order, refer any dispute before him to arbitration without the consent of the parties ;

and a tahsildár invested with the powers described in sections 140 to 144 (both inclusive) may, with the consent of the parties, refer to arbitration any dispute arising before him respecting the matters mentioned in the same sections.

221. In referring any such dispute to arbitration, the officer making the reference shall specify, in the order of reference, the precise matter submitted to the arbitrators, and such period as he may think reasonable for the delivery of the award ;

What to be specified in order of reference.

and he may, from time to time, extend such period.

222. The parties to the case may each nominate either one or two arbitrators, provided that each party shall nominate the same number ;

Appointment of arbitrators.

and a third or fifth arbitrator (as the case may be) shall be appointed by the officer making the reference.

And in cases when an officer in charge of a settlement or an Assistant Settlement-officer refers a dispute without the consent of the parties, he shall, if they refuse to nominate arbitrators under the first paragraph of this section, nominate three or five arbitrators as he thinks fit.

223. Every officer making a reference under this chapter may, on good cause shown, excuse any person from serving as an arbitrator, and may call on the party who nominated such person to nominate another in the place of the person so excused.

Power to excuse arbitrator from serving, and to call for nomination of substitute.

224. If an arbitrator die, desire to be discharged, or refuse or become incapable to act, the party who nominated him shall nominate another person in his place.

Nomination of new arbitrator in place of one dying or failing to act.

225. If, in any of the cases provided for by section 223 or section 224, any party fail for a week to nominate in manner aforesaid, the officer making the reference shall appoint some person to act as arbitrator.

Nomination by Collector when parties fail.

The arbitrators shall determine and award concerning the matters referred to them for arbitration ; and the parties disputing, and all persons claiming through them respectively, shall abide by and perform the award of the arbitrators.

Award.

226. If the arbitrators require the presence of the parties, or any other persons whose evidence may be necessary, they shall apply to the officer making the reference, who shall summon such parties or persons ;

Summoning parties to give evidence.

and all such parties or persons shall be bound to attend, either in person or by agent, as the arbitrators may require, and to state the truth, and to produce such documents and other things as may be required before the arbitrators.

Obligation of persons summoned.

Preparation and submission of award.

227. The award shall be made in writing under the hands of the arbitrators, and shall be submitted by them to the officer making the reference, who shall cause notice to be served on the parties to attend and hear the award.

In what cases award or subject of arbitration may be remitted to arbitrators.

228. The officer making the reference may remit the award, or any of the matters referred to arbitration, to the re-consideration of the same arbitrators,

(*a*) if the award has left undetermined some of the matters referred to arbitration, or if it determine matters not referred to arbitration ;

(*b*) if the award is so indefinite as to be incapable of execution ;

(*c*) if an objection to the legality of the award is apparent upon the face of the award.

Grounds on which award may be set aside.

229. No award shall be liable to be set aside except on the ground of corruption or misconduct of all or any of the arbitrators.

Application to set aside.

Any application to set aside an award shall be made within ten days after the day appointed for hearing the award.

Decision according to award.

230. If the officer making the reference does not see cause to remit the award or any of the matters referred to arbitration for re-consideration in the manner aforesaid,

and if no application has been made to set aside the award,

or if he has refused such application,

he shall decide in accordance with the award of the majority of the arbitrators,

and shall fix the amount to be allowed for the expenses of the arbitration, and direct by and to whom, and in what manner, the same shall be paid.

Bar to appeal and suit in Civil Court.

231. Such decision shall not be open to appeal, and shall be at once carried out ;

and no Civil Court shall entertain any suit for the purpose of setting it aside or against the arbitrators on account of their award.

Enforcement of Decisions.

Execution of decisions.

232. Any officer mentioned in section 207 may execute all decisions made by himself or by an Appellate Court on appeals in suits instituted in his Court under the provisions of this Act, in cases wherein a specific sum of money is adjudged to be due, or any costs or damages are awarded, by levying the same by any process in use for the recovery of an arrear of revenue or rent.

Delivery of possession of immoveable property.

233. In cases wherein possession of immoveable property is adjudged, the officer making the award may deliver over possession in the same manner, and with the same powers in regard to all contempts, resistance, and the like as may be lawfully exercised by the Civil Courts in execution of their own decrees.

Powers of Collectors.

Powers of Collectors of districts.

234. Collectors of districts may, in addition to their own powers, exercise all the powers conferred by this Act on Assistant Collectors.

Act XIX. of 1873. Powers of Assistant Collectors in charge of sub-divisions.

235. An Assistant Collector in charge of a sub-division of a district shall, as such, have the following powers :—

(1.) To refer cases for enquiry or decision to his subordinates under section 18 :

(2.) To withdraw cases from his subordinates, and to deal with them himself, or to refer them for disposal to any other subordinate officer competent to deal with them, under the same section :

(3.) To appoint patwáris on nomination of proprietors under section 25 ; and, in case of disagreement, under section 26 :

(4.) To appoint patwáris on failure of proprietors to nominate under section 27 :

(5.) To appoint a patwárí, if a disqualified person be nominated by the proprietors under section 28 :

(6.) To order changes in the proprietary register under section 94 and section 95 :

(7.) To levy fees for mutations under section 96 :

(8.) To enquire into cases of reported transfers under section 98 :

(9.) To levy fines under section 100 :

(10.) To declare the person best entitled to property, and put him in possession, under section 101 :

(11.) To enquire into cases of disputed transfer of non-proprietary rights under section 102 :

(12.) To report on revenue-free holdings, and to assess revenue on resumed grants, under section 103 :

(13.) To assess alluvial lands under section 104 :

(14.) To receive applications for partition under section 109 :

(15.) To issue notification of partition under section 111 :

(16.) To hear objections to partition, and disallow partition, under section 112 :

(17.) To hear objections raising questions of title or proprietary right, and to decide them or refer them to arbitration, under section 113.

(18.) To give parties the option of making partition, or of appointing arbitrators, or himself to make partition, under section 116 :

(19.) To make partitions under sections 107 to 139 (both inclusive) :

(20.) To fix the "limits"* of land occupied by a building, and the rent to be paid therefor, under section 124 :

(21.) To fix the rent of land which a former co-sharer continues, after partition, to cultivate in another mahál under section 125 :

(22.) To adjust the use, charges, and profits of tanks, wells, water-courses, and embankments under section 126 :

(23.) To fix the land-revenue on divided portions under section 128 :

(24.) To recover costs of partition under section 129 :

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* The word "limits" has been substituted for the word "rent" by Act VIII. of 1879, s. 26.

(25.) To strike off a partition-case in default of payment of costs under section 130: Act XIX. of 1873.

(26.) To receive applications for, and carry out, the union of estates under section 137:

(27.) To fine for injuries to boundary-marks, and, in certain cases, apportion the charges of repairing boundary-marks under sections 142 and 143:

(28.) To call on owners to erect or repair boundaries, and, in default, to erect and repair, and charge the cost to owners, and to decide disputes regarding boundaries, under section 144:

(29.) To distrain and sell moveable property of defaulters under section 153:

(30.) To fix the rent to be paid for their sír-land by proprietors of maháls which have been attached, transferred, held under direct management, farmed, or sold under the provisions of this Act:

(31.) To exercise any other jurisdiction or authority which, by this Act, is expressly attributed to Assistant Collectors.

236. Assistant Collectors of the first class, not in charge of sub-divisions of districts, shall exercise all or any of the powers conferred on Assistant Collectors of the first class in charge of sub-divisions in such cases or class of cases as the Collector of the district may, from time to time, refer to them for disposal.

Powers of Assistant Collectors of first class not in charge of sub-divisions.

237. All Assistant Collectors of the second class shall have power to investigate and report on such cases as the Collector of the district or Assistant Collector in charge of a sub-division of a district may, from time to time, commit to them for investigation and report.

Powers of Assistant Collectors of second class.

Powers of Settlement-officers.

238. Officers in charge of a settlement may exercise all the powers conferred by or under this Act on Settlement-officers, but none, but an officer in charge of a settlement or an Assistant Settlement-officer specially empowered by Government, shall have power—

Powers of officers in charge of settlement.

(1) to frame proposals for assessment under section 45:

(2) to distribute the assessment under section 46:

(3) to re-distribute land or revenue under section 47:

(4) to exclude proprietors from settlement for refusal to engage under sections 48 and 49:

(5) to adjust the rent of excluded proprietors under section 51:

(6) to make a sub-settlement under section 54, and a settlement under section 55:

(7) to make arrangements for securing the rights of persons with whom the settlement is not made under section 56:

(8) to deal with waste-land under sections 57 to 61 (both inclusive):

(9) to resume and assess rent-free tenures under sections 79 and 80

Act XIX. of 1873.

(10) to resume and assess revenue-free land under section 86:

(11) to decide claims to hold land revenue-free under sections 88 and 89.

Powers of Assistant Settlement-officers.

239. All other powers conferred on Settlement-officers by this Act shall be exercised by Assistant Settlement-officers under such restrictions as the officer in charge of a settlement may, from time to time, impose.

Investing of Settlement-officers with powers of Collector and Assistant Collector.

240. The Local Government may invest any officer in charge of a settlement with all or any of the powers of a Collector of a district under this or any other Act for the time being in force in the North-Western Provinces, and any Assistant Settlement-officer with all or any of the powers conferable on an Assistant Collector under this or any other Act for the time being in force in the North-Western Provinces, within such limits, and with such restrictions, and for such period, as it thinks fit.

Matter excepted from cognizance of Civil Courts.

241. No Civil Courts shall exercise jurisdiction over any of the following matters:—

(*a*) Claims by any person to any of the offices mentioned in sections 24 and 33, or to any emolument appertaining to such office, or in respect of any injury caused by his exclusion therefrom:

(*b*) The claim of any person to be settled with, or

the validity of any engagement with Government for the payment of revenue, or

the amount of revenue, cess, or rate to be assessed on any mahál or share of a mahál, under this or any other Act for the time being in force:

(*c*) Any claims connected with, or arising out of, any process enforced on account of neglect or refusal to accept the assessment or terms of sub-settlement proposed by the Settlement-officer:

(*d*) The formation of the record-of-rights,

the preparation, signing, or attestation of any of the documents contained therein, or

the notification of settlement:

(*e*) The determination of the class of a tenant or the rent payable by him, or the period for which such rent is fixed under this Act:

(*f*) The distribution of the land or allotment of the revenue of a mahál by partition; or

the determination of the rent to be paid by a co-sharer for land held by him after the partition in the mahál of another co-sharer:

(*g*) Any matters provided for in sections 53 to 61 (both inclusive):

(*h*) Any matters provided for in sections 79 to 89 (both inclusive) and 103:

(*i*) Claims connected with, or arising out of, the collection of revenue (other than claims under section 189) or any process enforced on account of an arrear of revenue,

or on account of any sum which is by this or any other Act realizable as revenue:

(*j*) Claims to set aside a sale for arrear of revenue other than claims under section 181;

(*k*) Any matter falling within the jurisdiction of the Court of Wards, or on which the jurisdiction of that Court is actively exercised, except for the

purpose of recovering property committed by that Court to the charge of the Collector of the district. Act XIX. of 1873.

In all the above cases, jurisdiction shall rest with the Revenue Authorities only.

CHAPTER VIII.

APPEALS.

Appeals to Collector of district.

242. An appeal shall lie from any order passed by any Assistant Collector of the first or second class, whether in charge of a sub-division or not, to the Collector of the district.

Appeal to officer in charge of settlement.

An appeal shall lie from any order passed by an Assistant Settlement-officer to the officer in charge of the settlement.

Appeal to Commissioner of Division.

243. An appeal shall lie to the Commissioner of the Division from any order passed by the Collector of a district or an officer in charge of a settlement, or from any declaration or distribution of assessment under section 45, 46, or 47.*

Appeal to Board.

244. Subject to the provisions of section 249 an appeal shall lie to the Board from any order passed under this Act by the Commissioner of a Division.

Limitation of appeal.

245. No appeal under section 242 shall be brought after the expiration of thirty days from the date of the order complained of.

No appeal under section 243 shall be brought after the expiration of sixty days from the date of the order complained of.

No appeal under section 244 shall be brought after the expiration of ninety days from the date of the order complained of.

Time to be excluded.

246. In computing the period prescribed for an appeal under this chapter, the day on which the order complained of was pronounced, and the time requisite for obtaining a copy of such order, shall be excluded.

Admission of appeal after period of limitation.

247. Any appeal under this chapter may be admitted after the period of limitation prescribed therefor, when the appellant satisfies the officer or Board to whom, or to which, he appeals that he had sufficient cause for not presenting the appeal within such period.

No appeal shall lie against an order under this section admitting an appeal.

Saving of orders expressly made final.

248. Nothing in this chapter applies to orders expressly made final by this Act, or to appeals under section 132.

Commissioner's order when not appealable, but subject to revision.

249. In any appeal to the Commissioner of a Division from an order passed by the Collector of the district or officer in charge of a settlement, on an appeal from an order of an Assistant Collector of the first or second class,

* Appeals from assessment, *North-Western Provinces Gazette*, 17th June 1876, p. 731

Act XIX. of 1873. or of an Assistant Settlement-officer, the Commissioner's order shall not be appealable, but shall be subject to revision by the Board under sections 253 and 255.

Powers of Appellate Court.

250. The Appellate Court may either admit or summarily reject the appeal:

If it admit the appeal, it may reverse, modify, or confirm the order of the lower Court,

or it may direct the Court to make such further investigation, or to take such additional evidence, as it may think necessary,

or it may itself take such additional evidence.

Power to suspend execution of order of lower Court.

251. In any case in which an appeal is allowed, the Appellate Court may, pending the order on appeal, direct the execution of the order of the lower Court to be suspended.

CHAPTER IX.

MISCELLANEOUS.

Provision where Court is closed.

252. Whenever a Court is closed on the last day of any period provided in this Act for the presentation of any memorandum of appeal, or for the deposit or payment of any money in or into Court, the day on which the Court re-opens shall be deemed to be such last day.

Power of Board to call for and examine record of case or proceedings of subordinate Revenue Court.

253. The Board may call for and examine the record of any case, or the proceedings of any Revenue Court subordinate to it, for the purpose of satisfying itself as to the legality or propriety of any order passed, and as to the regularity of the proceedings of such Court.

Power of Commissioner, &c., to call for records and proceedings.

254. The Commissioner of a Division, or the Collector of a district, or the officer in charge of a settlement, may call for and examine the record or proceedings of any Revenue Court subordinate to him respectively for the purposes mentioned in section 253;

Report to Board.

and, if he is of opinion that the proceedings taken or order passed by such subordinate officer should be modified, cancelled, or reversed, he shall report the case, with his opinion thereon for the orders of the Board.

Power of Board in cases called for or reported.

255. If in any case, whether called for by the Board or reported for orders, it appears to the Board that any order or proceedings should be modified, cancelled, or reversed, it may pass such order thereon as it thinks fit.

Power of Board to make rules.

256. The Board may, with the previous sanction of the Local Government, make and issue general rules for regulating the practice and procedure of their own Court, or of any Revenue Court subordinate to them, not otherwise provided for by law.*

* Conduct of Revenue Court business by Commissioner, *North-Western Provinces Gazette*, 31st October 1874, pp. 1835, 1836. Procedure in appeals to Commissioners, *ibid*, pp. 1837-1839; in appeals to Board of Revenue, *ibid*, 7th November 1874, pp. 1869-1872. Dates and places for hearing of appeals and applications for revision of judgment by Board, *ibid*, 21st October 1876, p. 1367. Instalments of revenue (amendment of former rules), *ibid*, 11th November 1867, pp. 1454-1456.

Power of Local Government to invest tahsildárs with certain powers.

To make rules.

257.* The Local Government may invest any tahsildár with the powers described in sections 140 to 144 (both inclusive), and may, from time to time, make rules consistent with this Act, Act XIX. of 1873.

(*a*) for regulating the assessment of land gained by alluvion, or the decrease of the assessment of a mahál in consequence of diluvion ;†

(*b*) for the guidance of Settlement-officers‡ in fixing rent under section 71 or section 72 and section 4 ;

All such rules shall be published in the *North-Western Provinces Gazette*, and shall thereupon have the force of law.

Power of Board to make rules.

The Board, subject to the sanction of the Local Government, may from time to time make rules consistent with this Act, for

(*c*)* prescribing the duties to be performed respectively by tahsildárs,§ kanungos,‖ and patwárís ; ¶

(*d*)* regulating the appointment of tahsildárs§ and officers ** inferior to the min rank, their duties, punishment, suspension, and dismissal;

(*e*)* prescribing the manner in which Settlement-officers shall report for sanction the rates and method of assessment and the amounts they propose to assess ;

(*ee*)* regulating the appointment, dismissal, and duties of lambardárs ;††

(*f*)* generally for the guidance of all persons in matters connected with the enforcement of this Act.‡‡

258. [*Repealed by Act VIII. of 1890.*]

Disposal of suits and applications pending before Settlement-officer, when settlement is closed.

259. If, while any suit or application under this Act is pending before a Settlement-officer, the settlement of the district in which the subject-matter of the suit or application is situate is closed by the issue of a notification under section 37, such suit or application shall be made over to the Court of the Collector of the district, and may be by him transferred or otherwise dealt with as if it had been originally instituted in or made to his Court.

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* S. 257 (cls. *c* to *f*) has been extended to the Province of Kumáon and Garhwál See Notification No. 457-I.—595 A, in *Gazette of India*, 1890, Pt. I., p. 220, and *N.-W. P and Oudh Gazette*, 1890, Pt. I., p. 154.

† Alluvion and Diluvion, *North-Western Provinces Gazette*, 12th December 1874, pp. 2018-2021 : Board's Circular, No. 1-1-9 of 7th September 1876 : *ibid*, 9th October 1875, p. 1441 : *ibid*, 4th December 1875, pp. 1680, 1681.

‡ Settlement-officers, *North-Western Provinces Gazette*, 9th October 1875, pp. 1426-1440. Correction of rules for Settlement-officers, *ibid*, 4th December 1875, p. 1676.

§ Tahsildárs, *North-Western Provinces Gazette*, 27th March 1875, pp. 422-425.

‖ Kanungos, *North-Western Provinces Gazette*, 29th May 1875, pp. 721-723; *ibid*, 28th May 1877, p. 497.

¶ Patwárís, *North-Western Provinces Gazette*, 3rd April 1875, pp. 454-460; *ibid*, 28th May 1877, p. 483.

** Lambardárs, *North-Western Provinces Gazette*, 27th March 1875, p. 425.

†† This clause has been inserted by Act VIII. of 1879, s. 27.

‡‡ Estates under Court of Wards, *North-Western Provinces Gazette*, 27th September 1875, pp. 1345-1347.

Act XIX. of 1873.

THE FIRST SCHEDULE.

I. The province of Kumáon and Garhwál.

II. The Tarái Parganas, comprising—Bázpúr, Káshipúr, Jaspúr, Rudarpúr, Gadarpúr, Kilpurí, Nanak-Máttha, and Bilherí.

III. In the Mirzápúr District:—

(1.) The tappás of Agori Khás and South Kon in the Pargana of Agori.

(2.) The tappá of British Singrauli in the Pargana of Singrauli.

(3.) The tappás of Phulwa Dúdhí and Barhá in the Pargana of Bichipár.

(4.) The portion lying to the South of the Kaimor Range.

IV. The Family Domains of the Mahárájá of Benares, comprising the following parganas:—

Bhadohi and Kheyra Mángror in the Mirzápúr District.

Kaswá Rájá in the Benares District.

V. The tract of country known as Jaunsár Báwár in the Dehra Dún District.

THE SECOND SCHEDULE.

ENACTMENTS REPEALED.

Part I.—Regulations.

Number and year.	TITLE OR ABBREVIATED TITLE.	Extent of repeal.
II. of 1795 ...	A Regulation for re-enacting, with Modifications and Amendments, the Rules regarding the temporary and permanent Settlements of the Revenue in the Province of Benares.	So much as has not been repealed.
V. of 1795 ...	A Regulation prescribing Rules for the Conduct of the Collector of the public Revenue in the Province of Benares.	So much as has not been repealed.
VI. of 1795 ...	A Regulation prescribing the Process by which the Collector and the Tehseeldars are to realize the public Revenue payable from the Lands in the Province of Benares.	So much as has not been repealed.
XIX. of 1795 ...	A Regulation for forming a quinquennial Register of the Landed Estates in Benares, subject to the Payment of Revenue to Government, and of the Amount of the fixed annual Revenue payable to Government from each Estate.	So much as has not been repealed.

SECOND SCHEDULE—(*continued*).

Number and year.	TITLE OR ABBREVIATED TITLE.	Extent of repeal.
XLI. of 1795 ...	A Regulation prescribing Rules for trying the Validity of the Titles of Persons holding, or claiming a Right to hold, Lands exempted from the Payment of Revenue to Government in the Province of Benares, &c.	The whole.
XLII. of 1795 ...	A Regulation for enacting, with Modifications, the Rules for trying the Validity of the Titles of Persons holding, or claiming a Right to hold, Altumgah, Jaghire, and other Lands in the Province of Benares, exempt from the Payment of public Revenue, &c.	So much as has not been repealed.
LI. of 1795 ...	A Regulation respecting Ryotty Pottahs in the Province of Benares.	So much as has not been repealed.
LVIII. of 1795 ...	A Regulation for granting to the Collectors a Commission on the Jumma of Lands, &c.	So much as has not been repealed.
XV. of 1797 ...	A Regulation for levying certain Fees to defray the Expense of the Offices for keeping the Records in the Native Languages which relate to the public Revenue established under Regulations XXI., 1793, and XXX., 1795.	The whole, so far as it relates to the North-Western Provinces.
V. of 1800 ...	A Regulation for extending to the Province of Benares the Rules contained in Regulation VII., 1799, for enabling Proprietors and Farmers of Land to realize their Rents with greater Punctuality; as well as such other Parts of the above Regulation as are applicable to the Province of Benares.	The whole.
VIII. of 1800 ...	A Regulation for preparing a general Pergunnah Register of Lands; and for certain Alterations in the prescribed Registers of Estates paying Revenue, and Lands held exempt from the Payment of Revenue.	The whole, so far as it relates to the North-Western Provinces.
I. of 1801 ...	A Regulation to explain and amend Part of the Rules for collecting the Public Revenue contained in Regulations VII., 1799, and V., 1800, &c.	The whole, so far as it relates to the North-Western Provinces.

Act XIX. of 1873.

SECOND SCHEDULE—(*continued*).

Number and year.	Title or Abbreviated Title.	Extent of repeal.
III. of 1803 ...	A Regulation for receiving, trying, and deciding suits or complaints, declared cognizable in the Courts of Adawlut, &c.	So much as has not been repealed.
V. of 1803 ...	A Regulation for empowering the Sudder Dewanny Adawlut to try appeals, &c.	Section twenty-six.
XXIII. of 1803 ...	A Regulation for establishing in each Zillah, in the Provinces ceded by the Nawaub Vizier to the Honourable the English East India Company, an Office for keeping the Records in the Native Languages which relate to the public Revenue, and prescribing Rules for the Conduct of the keepers of the Records.	The whole.
XXV. of 1803 ...	A Regulation prescribing Rules for the Conduct of the Board of Revenue and the Collectors, &c.	The whole.
XXVII. of 1803 ...	A Regulation prescribing the process by which the Collector and the Tehseeldárs are to realize the public Revenue payable from the Lands in the Provinces ceded by the Nawaub Vizier to the Honourable the English East India Company.	So much as has not been repealed.
XXX. of 1803 ...	A Regulation prescribing Rules for the grant of Pottahs by the Landholders in the Provinces ceded by the Nawaub Vizier to the Honourable the English East India Company, to their Underfarmers, Tenants, and Ryots.	So much as has not been repealed.
XXXI. of 1803 ...	A Regulation for trying the Validity of the Titles of Persons holding, or claiming a Right to hold, Lands exempted from the Payment of Public Revenue, under Grants not being Badshahee or Royal Grants, in the Provinces ceded by the Nawaub Vizier to the Honourable the English East India Company. &c.	So much as has not been repealed.

SECOND SCHEDULE—(*continued*).

Number and year.	Title or Abbreviated Title.	Extent of repeal.
XXXVI. of 1803 ...	A Regulation for trying the Validity of the Titles of Persons holding, or claiming a Right to hold, Lands exempted from the Payment of Public Revenue, under Badshahee or Royal Grants, in the Provinces ceded by the Nawaub Vizier to the Honourable the English East India Company, &c.	So much as has not been repealed.
XLII. of 1803 ...	A Regulation for forming a periodical Register of the Zamindaries and other landed Estates paying revenue to Government, in the Provinces ceded by the Nawaub Vizier to the Honourable the English East India Company.	So much as has not been repealed.
LII. of 1803 ...	A Regulation for establishing a Court of Wards in the Provinces ceded by the Nawaub Vizier to the Honourable the English East India Company.	So much as has not been repealed.
V. of 1804 ...	A Regulation to provide for the Appointment and Removal of the Native Officers of Government in the Judicial, Revenue, and Commercial Departments, and in the Departments of Salt, Opium, and Customs; also to make further provision for administering the Oath prescribed by the Statute 33rd Geo. III., Cap. 52.	So far as it relates to the appointment of Native Officers employed in the Land Revenue Department, North-Western Provinces.
VIII. of 1805 ...	A Regulation for extending to the Conquered Provinces, &c.	So much as has not been repealed.
IX. of 1805 ...	A Regulation for enacting into a Regulation certain Articles of a Proclamation to be issued in the Conquered Provinces situated within the Dooab and on the right bank of the river Jumna, and in the Territory ceded to the Honourable the English East India Company in Bundlecund by the Peishwa.	The whole.
VI. of 1806 ...	A Regulation for the more effectual Repair of Embankments.	So much as has not been repealed.

Act XIX. of 1873.

SECOND SCHEDULE—(*continued*).

Number and year.	TITLE OR ABBREVIATED TITLE.	Extent of repeal.
VII. of 1807 ...	A Regulation for making certain Alterations in the Provisions which have hitherto been in force in the Province of Benares, respecting Persons paying or wishing to pay their Revenue directly to the Treasury of the Collector, instead of paying it through the Medium of a Tehseeldar.	So much as has not been repealed.
IV. of 1808 ...	A Regulation for the Appointment and Administration of the Office of a Canoongoe in the Ceded and Conquered Provinces, and in the Province of Benares.	The whole.
VIII. of 1809 ...	A Regulation for modifying Parts of the Rules in Force respecting the Appointment and Removal of the Native Officers of Government in the Judicial, Revenue, and Commercial Departments.	So far as it relates to the Land Revenue Department.
V. of 1812 ...	A Regulation for amending some of the Rules at present in force for the Collection of the Land Revenue.	The whole, so far as it relates to the North-Western Provinces.
XVIII. of 1812 ...	A Regulation for explaining Section II., Regulation V., 1812, and rescinding Sections III. and IV., Regulation XLIV., 1793, and Sections III. and IV., Regulation L., 1795, and enacting other Rules in lieu thereof.	The whole, so far as it relates to the North-Western Provinces.
XII. of 1817 ...	A Regulation for securing the better Administration of the Office of Patwárí in the Ceded and Conquered Provinces, the Provinces of Behar and Benares, the District of Cuttack, the Pergunnah of Puttaspore and its Dependencies.	The whole, so far as it relates to the North-Western Provinces.
I. of 1819 ...	A Regulation for replacing the Districts of Dinagepore and Rungpore under the Management of the Board of Revenue, &c.	The whole, so far as it relates to the North-Western Provinces.

SECOND SCHEDULE—(*continued*). Act XIX. of 1873.

Number and year.	Title or Abbreviated Title.	Extent of repeal.
II. of 1819 ...	A Regulation for modifying the Provisions contained in the existing Regulations, regarding the Resumption of the Revenue of Lands held free of Assessment under Illegal or Invalid Tenures, &c.	The whole, so far as it relates to the North-Western Provinces.
IV. of 1821 ...	A Regulation for authorizing a Collector of Land Revenue or other officer employed in the Management or Superintendence of any branch of the Territorial Revenues, to exercise, in certain Cases, the powers of Magistrate, or Joint-Magistrate, &c.	The whole, so far as it relates to the North-Western Provinces.
III. of 1822 ...	A Regulation for modifying the Constitution, and altering the Jurisdiction of the several Boards vested with the Superintendence of the Land Revenue, in the Territories belonging to the Presidency of Fort William.	The whole, so far as it relates to the North-Western Provinces.
VI. of 1822 ...	A Regulation to establish a Court of Wards for Benares, and to define and explain certain of the Rules regarding the Powers and Jurisdiction of the several Courts of Wards.	So much as has not been repealed.
VII. of 1822 ...	A Regulation for declaring the Principles according to which the Settlement of the Land Revenue in the Ceded and Conquered Provinces, &c.	The whole, so far as it relates to the North-Western Provinces.
XI. of 1822 ...	A Regulation for modifying and explaining the existing Regulations relative to the Sale of Land for the Recovery of Arrears of Revenue, &c.	The preamble and sections two and thirty-six.
IX. of 1824 ...	A Regulation to extend, with certain Exceptions and Conditions, the existing Settlement in the Conquered Provinces and in Bundelcund for a further period of Five Years.	So much as has not been repealed.
IX. of 1825 ...	A Regulation for extending the Operation of Regulation VII., 1822, &c.	The whole, so far as it relates to the North-Western Provinces.

Act XIX. of 1873.

SECOND SCHEDULE—(*continued*).

Number and year.	TITLE OR ABBREVIATED TITLE.	Extent of repeal.
XIII. of 1825 ...	A Regulation to maintain the Settlement made for certain Lands held exempt from the Payment of Revenue by Canoongoes in the Province of Behar, &c.	The whole, so far as it relates to the North-Western Provinces.
XIV. of 1825 ...	A Regulation to declare the extent of the Authority possessed by the Revenue Authorities subordinate to the Governor-General in Council, in the Confirmation of Lakheraj Tenures, &c.	The whole, so far as it relates to the North-Western Provinces.
III. of 1828 ...	A Regulation for the Appointment of Special Commissioners for the more speedy Hearing and Determination of Appeals from the Decisions of the Revenue Authorities, &c.	The whole, so far as it relates to the North-Western Provinces.
IV. of 1828 ...	A Regulation to declare and extend the Powers to be exercised by Collectors, when making or revising Settlements, under the Provisions of Regulation VII., 1822.	The whole, so far as it relates to the North-Western Provinces.
I. of 1829 ...	A Regulation for constituting Commissioners of Revenue and Circuit, &c.	The whole, so far as it relates to the North-Western Provinces.
IV. of 1829 ...	A Regulation for modifying, in certain Cases, the Rules laid down in Clauses Fourth and Fifth, Section II., Regulation III., 1828, relative to Appeals to the Special Commissioners appointed under that Regulation; also for modifying part of Clause Second, Section X., Regulation I., 1829.	The whole, so far as it relates to the North-Western Provinces.
XI. of 1829 ...	A Regulation for modifying the Rules in force relative to the Construction and Repair of Embankments.	The whole.
X. of 1831 ...	A Regulation for vesting in a Deputation from the Sudder Board of Revenue, to be ordinarily stationed at Allahabad, the exclusive Control over the Revenue Affairs of the Province of Benares, &c.	The whole, so far as it relates to the North-Western Provinces.
IX. of 1833 ...	A Regulation to modify certain Portions of Regulation VII. of 1822 and Regulation IV. of 1828, &c.	Sections two to fifteen, both inclusive.

SECOND SCHEDULE—(*concluded*).

PART II.—ACTS.

Number and year.	TITLE OR ABBREVIATED TITLE.	Extent of repeal.
Act I. of 1841 ...	An Act for facilitating the Collection of the Revenue of Government, and defining the Interest intended to be conveyed by Public Sales for the Realization of Arrears of the Public Revenue in Putteedarry Estates.	So much as has not been repealed.
Act XII. of 1841 ...	An Act for amending the Bengal Code in regard to Sales of Land for Arrears of Revenue.	So much as has not been repealed.
Act I. of 1845 ...	An Act to amend Act No. XII. of 1841, entitled "An Act for amending the Bengal Code in regard to Sales of Land for Arrears of Revenue."	So much as has not been repealed.
Act VIII. of 1846 ...	An Act for determining the Duration of the existing Settlement of the North-Western Provinces.	The whole, except as to the settlement of Bandá.
Act I. of 1847 ...	An Act for the Establishment and Maintenance of Boundary-marks in the North-Western Provinces of Bengal.	The whole.
Act XXVI. of 1854 ...	An Act for making better Provision for the Education of male Minors subject to the superintendence of the Court of Wards.	The whole Act, so far as it applies to the North-Western Provinces.
Act XXXI. of 1858 ...	An Act to make further Provision for the Settlement of Land gained by Alluvion in the Presidency of Fort William in Bengal.	The whole, so far as it relates to the North-Western Provinces.
Act XIX. of 1863 ...	An Act to consolidate and amend the Law relating to the Partition of Estates paying Revenue to Government in the North-Western Provinces of the Presidency of Fort William in Bengal.	The whole, so far as it relates to the North-Western Provinces.

Act II. of 1874.

ACT II. OF 1874.*

ADMINISTRATOR-GENERAL'S ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 10TH FEBRUARY 1874.

An Act to consolidate and amend the Law relating to the Office and Duties of Administrator-General.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to the office and duties of Administrator-General; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title.

1. This Act may be called the "Administrator-General's Act, 1874:"

Local extent.

It extends to the whole of British India and, so far as regards British subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty;

Commencement.

And it shall come into force at once.

Repeal of Acts.

2. Act No. XXIV. of 1867 (*to consolidate and amend the law relating to the office and duties of Administrator-General*) and Act No. XIX. of 1869 (*to facilitate administration to the estates of deceased British subjects in the Hyderabad Assigned Districts*) and Act No. V. of 1870 (so far as it relates to the Administrator-General) are hereby repealed.

All things duly done under any of the enactments hereby repealed shall be considered as having been done under this Act.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

"Presidency of Bengal."

"Presidency of Bengal†" includes—

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* Act II. of 1874 has been declared in force in British Baluchistan.—See Reg. I. of 1890, s. 3. In the Santál Parganas, see Reg. III. of 1872, s. 3, as amended by Reg. III. of 1886, s. 2; and in the Hill District of Arakan, see Reg. IX. of 1874, s. 3.

The Act has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely, the Districts of Hazáribágh, Lohárdága, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum.—See *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504.

The Act has been extended, under the same Act, to the N.-W. P. Tarái.—See *Gazette of India*, dated Sep. 23, 1876, Pt. I., p. 505.

† For power to divide "the Presidency of Bengal" into provinces, see s. 68, *infra*.

(*a*) the territories for the time being respectively under the governments of the Lieutenant-Governors of Bengal, the North-Western Provinces, and the Punjáb; Act II. of 1874.

(*b*) the territories for the time being respectively under the administration of the Chief Commissioners of Oudh, the Central Provinces, Burma,* Ajmere and Merwará, Assam, and the Andaman and Nicobar Islands;

(*c*) such of the dominions of Princes and States aforesaid as the Governor-General in Council may, by notification† in the *Gazette of India*, from time to time direct:†

"Presidency of Madras." "Presidency of Madras" includes—

(*a*) the territories for the time being under the government of the Governor of Fort St. George in Council;

(*b*) such of the dominions aforesaid as the Governor-General in Council may, by notification in the *Gazette of India*, from time to time direct;†

(*c*) Coorg;

(*d*) Mysore:

"Presidency of Bombay." "Presidency of Bombay" means—

(*a*) the territories for the time being under the government of the Governor of Bombay in Council "and under the administration of the Chief Commissioner of British Baluchistan;"‡

(*b*) such of the dominions aforesaid as the Governor-General in Council may, by notification in the *Gazette of India*, from time to time direct;†

(*c*) the Hyderabad Assigned Districts:

"Presidency-town." "Presidency-town" means the town of Calcutta, Madras, or Bombay, as the case may be:

"Government." "Government" means the Governor-General in Council, so far as the Act relates to the Presidency of Bengal; the person for the time being administering the executive government of the Presidency of Fort St. George, so far as the Act relates to the Presidency of Madras; and the person for the time being administering the executive government of the Presidency of Bombay, so far as the Act relates to the Presidency of Bombay:

"Letters of administration." "Letters of administration" shall include any letters of administration, whether general or limited, or with a will annexed, and letters *ad colligenda bona*:

"Next of kin." "Next of kin" includes a widower or widow of a deceased person, or any other person who, by law and according to the practice of the Courts, would be entitled to letters of administration in preference to a creditor or legatee of the deceased:

"Officer." "Officer" means a commissioned officer of Her Majesty's Army, or of Her Majesty's Indian Army:

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* In s. 3 "Burma" was substituted for "British Burma" by Act II. of 1890, s. 10.

† For list of States notified under these clauses, see Appendix.

‡ In s. 3 the words quoted were added by Act II. of 1890, s. 10.

Act II. of 1874.

"Soldier" means a soldier of Her Majesty's Army, or European soldier of Her Majesty's Indian Army, including a warrant and a non-commissioned officer:

"Soldier."

"Assets" includes immoveable as well as moveable property.

"Assets."

PART II.

OF THE OFFICE OF ADMINISTRATOR-GENERAL.

Designation of the Administrators-General in the three Presidencies.

4. In each of the Presidencies of Bengal, Madras, and Bombay, there shall be an Administrator-General.*

The said Administrators-General shall be called respectively the Administrator-General of Bengal, the Administrator-General of Madras, and the Administrator-General of Bombay.

Appointment, suspension, and removal of Administrators-General.

5. Such officers shall be appointed and may be suspended or removed by the authorities hereinafter mentioned, respectively; that is to say:—

the Administrator-General of Bengal, by the Governor-General in Council

the Administrator-General of Madras, by the Government of Fort St. George; and

the Administrator-General of Bombay, by the Government of Bombay.

Qualification of future, and continuance of existing, incumbents.

6. Any person hereafter appointed to the office of Administrator-General or Officiating Administrator-General of any of the said Presidencies shall be a member of the Bar of England or Ireland, or of the Faculty of Advocates in Scotland; but any person now holding such office shall continue to hold the same, subject to the provisions contained in the other sections of this Act.

Administrator-General not an officer of High Court.

7. The Administrator-General shall not be deemed in that capacity to be an officer of any High Court.

Probates, &c., granted by Supreme Courts to Ecclesiastical Registrars to have same effect as if granted to Administrator-General.

8. All probates and letters of administration granted by any of the late Supreme Courts of Judicature to the Ecclesiastical Registrar of such Court in virtue of his office shall have the same effect in all respects as to any act hereafter to be done or required to be done under this Act, as if they had been granted to the Administrator-General.

No Administrator-General to be Ecclesiastical Registrar.

9. No person now holding the office of Administrator-General, or hereafter to be appointed to such office in any of the said Presidencies, shall hold the office of Ecclesiastical Registrar; nor, without the express sanction of Government, any other office together with that of Administrator-General:

Administrator-General not to hold any other office without sanction of Government.

Provided that the Administrator-General of the Presidency may be appointed Official Trustee under Act No. XVII. of 1864 (*to constitute an office of Official Trustee*):

* For power to divide the "Presidency of Bengal" into provinces, and to appoint an Administrator-General for each province, see s. 68, *infra*.

Provided also that the Administrator-General of Bengal may hold the office of Receiver of the High Court of Judicature at Fort William. Act II. of 1874.

10. It is hereby declared to be an offence, punishable in manner provided by section 168 of the Indian Penal Code, for any Administrator-General to trade or traffic for his own benefit, or for the benefit of any other person, unless so far as appears to him to be expedient for the due management of the estates which come into his charge under the provisions of this Act, and for the sole benefit of the several persons entitled to the proceeds of such estates respectively; but this exception is not to be construed to alter the civil liabilities of the Administrator-General as trustee of such estates.

Penalty for trading.

Exception.

11. Unless the Governor-General in Council, or the Government with the sanction of the Governor-General in Council, otherwise orders, every Administrator-General hereafter to be appointed shall give security to the Secretary of State for India, for the due execution of his office, for one lakh of rupees by his own bond, and for another lakh of rupees, or for separate sums amounting together to one lakh of rupees, by the deposit of Government securities, or by the joint and several bond or bonds of two or more sureties to be approved by Government, or partly by such deposit and partly by such bond or bonds:

Security to be given by Administrator-General.

Provided that every Administrator-General may, with the consent of Government, substitute either of the said two last-mentioned kinds of security for another previously given for such last-mentioned lakh or any part of it:

Substitution of security or sureties.

and every Administrator-General may, with the consent of Government, and shall from time to time when required by Government so to do, cause fresh sureties to be substituted for any of those previously bound, so far as the security relates to the due execution of his office for the time then to come.

12. No Administrator-General shall be required by any Court to enter into any administration-bond, or to give other security to the Court, on the grant of any letters of administration to him in virtue of his office.

No security nor oath to be required from Administrator-General.

No Administrator-General shall be required to verify, otherwise than by his signature, any petition presented by him under the provisions of this Act; and, if the facts stated in any such petition are not within the Administrator-General's own personal knowledge, the petition may be subscribed and verified by any person competent to make the verification.

Whoever makes a statement in any such petition which is false, and which he either knows or believes to be false, or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding.

13. Whenever any person holding the office of Administrator-General obtains leave of absence, the Government may appoint some person to officiate as Administrator-General; and such person, while so officiating, shall be subject to the same conditions and be bound by the same responsibilities as the Administrator-General by any law for the time being in force, and he shall be deemed to be Administrator-General for the time being under this Act, and shall be liable to give security under section 11 in like manner as if he had been appointed Administrator-General.

Appointment of Officiating Administrator-General.

Act II. of 1874.

PART III.

OF THE RIGHTS, POWERS, AND DUTIES OF THE ADMINISTRATOR-GENERAL.

(*a*) *Grants of Letters of Administration and Probate to the Administrator-General.*

14. So far as regards the Administrator-General of any of the Presidencies of Bengal, Madras, and Bombay, the High Court at the Presidency-town shall be deemed to be a Court of competent jurisdiction within the meaning of sections 187 and 190 of the Indian Succession Act, 1865, wheresoever within the Presidency the property to be comprised in the probate or letters of administration may be situate.

As regards Administrator-General, High Court at Presidency-town to be deemed a Court of competent jurisdiction within meaning of Act X. of 1865, sections 187 and 190.

15. Any letters of administration, or letters *ad colligenda bona*, hereafter be* granted by the High Court of Judicature at any Presidency-town, shall be granted to the Administrator-General of the Presidency, unless they are granted to the next of kin of the deceased.

Administrator-General entitled to letters of administration, unless granted to next of kin.

The Administrator-General of the Presidency shall be deemed by all the Courts in the Presidency to have a right to letters of administration in preference to that of any person merely on the ground of his being a creditor, a legatee other than an universal legatee, or a friend of the deceased.

Administrator-General entitled in preference to creditor, non-universal legatee, or friend.

16. If any person, not being a Hindu, Muhammadan, Parsi,† or Buddhist, or a person exempted under the Indian Succession Act, 1865, section 332, from the operation of that Act, shall have died, whether within any of the said Presidencies or not, and whether before or after the passing of this Act, and shall have left assets exceeding, at the date of the death or within one year thereafter, the value of one thousand rupees within any of the said Presidencies,

When Administrator-General is to administer estates of persons other than Hindus, &c.

and if no person to whom the Court would have jurisdiction to commit administration of such assets has, within one month after his death, applied in such Presidency for probate of his will, or for any letters of administration of his estate,

the Administrator-General of the Presidency in which such assets are shall, within a reasonable time after he has had notice of the death of such person, and of his having left such assets as aforesaid, take such proceedings as may be necessary to obtain from the High Court at the Presidency-town letters of administration to the effects of such person, either generally or with a will annexed, as the case may require.

Whenever the Administrator-General of the Presidency takes proceedings under this section, it shall be sufficient if the petition required by section 246 of the Indian Succession Act, 1865, states—

(*a*) the time and place of the deceased's death, to the best of the petitioner's knowledge or belief,

(*b*) that the deceased left some property within the Presidency as hereinbefore defined, and

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* *Sic: read* to be.

† The word "Parsi" in s. 16 was inserted by Act IX. of 1881, s. 2.

(*c*) the amount or value of assets which are likely to come into the petitioner's hands. Act II. of 1874.

Power to direct Administrator-General to apply for administration.

17. Whenever any person, whether a Hindu, Muhammadan, Parsi,* or Buddhist, or not, shall have died leaving assets within the local limits of the ordinary original civil jurisdiction of the High Court at the Presidency-town, it shall be lawful for the Court,

upon the application of any person interested in such assets, or in the due administration thereof, either as a creditor, legatee, next of kin, or otherwise, or

upon the application of a friend of any minor so interested, or

upon the application of the Administrator-General,

if the applicant satisfies the Court that danger is to be apprehended of the misappropriation, deterioration, or waste of such assets unless letters of administration of the effects of such person are granted,

to make an order, upon such terms as to indemnifying the Administrator-General against costs and other expenses as the Court thinks fit, directing the Administrator-General to apply for letters of administration of the effects of such person :

Administration to effects of Hindus, &c., when granted under this section.

Provided that, in the case of an application being made under this section for letters of administration to the effects of a deceased Hindu, Muhammadan, Parsi,* or Buddhist, or person exempted as aforesaid, the Court may refuse to grant letters of administration to any person, if it be satisfied that such grant is unnecessary for the protection of the assets; and in such case the Court shall make such order as to the costs of the application as it thinks just.

Costs of unnecessary application.

Power to enjoin Administrator-General to collect and hold assets until right of succession or administration is ascertained.

18. Whenever any person, whether a Hindu, Muhammadan, Parsi*, or Buddhist, or not, shall have died, whether before or after the passing of this Act, leaving assets within the local limits of the ordinary original civil jurisdiction of any of the said High Courts,

and such Court is satisfied that danger is to be apprehended of the misappropriation, deterioration, or waste of such property before it can be ascertained who may be legally entitled to the succession to such property, or whether the Administrator-General is entitled to letters of administration to such deceased person,

the Court may authorize and enjoin the Administrator-General to collect and take possession of such property, and to hold or deposit or invest the same according to the orders and directions of the Court, and, in default of any such orders or directions, according to the provisions of this Act, so far as the same are applicable to such property;

Rate of commission payable in such case.

and the Administrator-General shall be entitled to a commission of one *per centum* upon the amount of all moveable assets collected or received by him in pursuance of such order, and also to reimburse himself for all payments made by him in respect of the assets which a private administrator of such assets might lawfully have made ;

* The word "Parsi" in ss. 17 and 18 was inserted by Act IX. of 1881, s. 2.

Act II. of 1874.

and, in case letters of administration of any such property are afterwards granted to the Administrator-General, the said commission of one *per centum* shall be deemed a part-payment of the commission payable to the Administrator-General under the letters of administration.

Any order of Court made under the provisions of this section shall entitle the Administrator-General to collect and to take possession of such property, and, if necessary, to maintain a suit for the recovery thereof.

Grant of probate to executor appearing in the course of proceedings taken by Administrator-General.

19. If, in the course of proceedings to obtain letters of administration under the provisions of section 16 or section 17,

any executor appointed by a will of the deceased appears according to the practice of the Court, and proves the will and accepts the office of executor,

or if any person appears according to such practice, and makes out his claim to letters of administration as next of kin of the deceased, and gives such security as is required of him by law or by the practice of the Court,

the Court shall grant probate of the will or letters of administration accordingly, and shall award to the Administrator-General his costs of the proceedings so taken by him, to be paid out of the estate as part of the testamentary or intestate expenses thereof.

Costs of proceedings taken by Administrator-General to be paid out of estate.

If no executor or next of kin appear or give necessary security, administration to be granted to Administrator-General.

20. If no person appears according to the practice of the Court, and entitles himself to probate of a will, or to a grant of letters of administration as next of kin of the deceased,

or if the person who entitles himself to a grant of administration neglects to give such security as may be required of him by law or according to the practice of the Court,

the Court shall grant letters of administration to the Administrator-General.

21. The Administrator-General shall, when duly authorized or required so to do by the Military Secretary to Government, secure and distribute the assets of the estate and effects of any officer, soldier, or other person subject to any Articles of War, in all cases in which such estate and effects do not exceed in the whole five hundred rupees, charging the estate with a commission of three *per centum* only.

Administrator-General in certain cases to secure and distribute the effects of soldiers.

It shall not be necessary for the Administrator-General to take out letters of administration in cases referred to in this section; but he shall have the same powers with regard to all such assets as he would have had if he had taken out such letters.

Proviso.

22. When the Administrator-General applies for letters of administration to the effects of any officer, soldier, or other person subject to the Articles of War, the Court may grant to him letters of administration limited to the purpose of dealing with such effects in accordance with the provisions of the Regimental Debts Act, 1863,* or any other law for the

Power to grant Administrator-General letters limited to purpose of dealing with assets in accordance with Regimental Debts Act.

* 26 and 27 Vic., c. 57, printed in the "Collection of Statutes relating to India," Ed. 1881, Vol. II., p. 770.

time being in force relating to the payment of regimental debts, and the distribution of the effects of officers dying on service. Act II. of 1874.

Administrator-General not precluded from applying for letters within one month after death.

23. Nothing in this Act is intended to preclude the Administrator-General from applying to the Court for letters of administration in any case within the period of one month from the death of the deceased.

Effect of probate or letters granted to Administrator-General.

23A.* Probate or letters of administration granted by the High Court at Calcutta, Madras, or Bombay to the Administrator-General of the Presidency of Bengal, Madras, or Bombay, as the case may be, shall have effect over all the property and estate, moveable or immoveable, of the deceased throughout such Presidency,

and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to such Administrator-General:

Provided that the High Court may direct, by its grant, that such probate or letters of administration shall have like effect throughout either or both of the other Presidencies.

Whenever a grant of probate or letters of administration is made by a High Court to the Administrator-General with such effect as last aforesaid, the Registrar of such Court shall send to each of the other two High Courts a certificate that such grant has been made, and such certificate shall be filed by the Court receiving the same.

After revocation, letters granted to Administrator-General to be deemed as to him to have been voidable only.

Exception.

24. If any letters of administration granted to the Administrator-General under the provisions of this Act be revoked or recalled, the same shall, so far as regards the Administrator-General and all persons acting under his authority in pursuance thereof, be deemed to have been only voidable, except as to any act done by any such Administrator-General or other person as aforesaid, after notice of a will or of any other fact which would render such letters void:

Proviso.

Provided that no notice of a will or of any other fact which would render any such letters void shall affect the Administrator-General or any person acting under his authority in pursuance of such letters, unless within the period of one month from the time of giving such notice, proceedings be commenced to prove the will, or to cause the letters to be revoked, nor unless such proceedings be prosecuted without unreasonable delay.

Payments made by Administrator-General prior to revocation.

25. If any letters of administration granted under this Act be revoked upon the production and proof of a will, all payments made or acts done by or under the authority of the Administrator-General in pursuance of such letters of administration prior to the revocation thereof, which would have been valid under any letters of administration lawfully granted to him with such will annexed, shall be deemed valid, notwithstanding such revocation.

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* S. 23A was inserted by Act IX. of 1881, s. 3.

Act II. of 1874.

Recall of Administrator-General's administration, and grant of probate, &c., to executor or next of kin.

26. If an executor or next of kin of the deceased, who has not been personally served with a citation, or who has not had notice thereof in time to appear pursuant thereto, establish to the satisfaction of the Court a claim to probate of a will or to letters of administration in preference to the Administrator-General, any letters of administration granted by virtue of this Act to the Administrator-General may be recalled and revoked, and probate may be granted to such executor, or letters of administration granted to such other person as aforesaid :

Time within which application to revoke must be made.

Provided that no letters of administration granted to the Administrator-General shall be revoked or recalled for the cause aforesaid, except in cases in which a will or codicil of the deceased is proved in the Presidency, unless the application for that purpose be made within six months after the grant to the Administrator-General, and the Court be satisfied that there has been no unreasonable delay in making the application, or in transmitting the authority under which the application is made.

Costs of obtaining administration, &c., may, on revocation, be ordered to be paid to Administrator-General out of assets.

27. If any letters of administration granted to the Administrator-General in pursuance of this Act be revoked, the Court may order the costs of obtaining such letters of administration, and the whole or any part of any commission which would otherwise have been payable under this Act, together with the costs of the Administrator-General in any proceedings taken to obtain such revocation, to be paid to or retained by the Administrator-General out of any assets belonging to the estate :

Provided that, in any such case, when the deceased has left a will appointing an executor, and probate of the will has been granted by any Court in the Presidency to such executor within three months after the death,

or when the widow or next of kin has, within one month if resident within the Presidency, or within three months if resident beyond the Presidency, obtained from any such Court letters of administration to the estate and effects of the deceased,

then and in either of such cases the Administrator-General shall (without prejudice to the provisions contained in sections 17 and 18) not be entitled to receive or retain any commission out of any assets belonging to such estate, and situate within the jurisdiction of the Court by which probate or administration has been granted as last aforesaid.

Distribution of assets.

28. * When the Administrator-General has given such notices as would have been given by the High Court in an administration-suit for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets or any part thereof in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he had not notice at the time of such distribution; and no notice of any claim shall affect him unless proceedings to enforce such claim are commenced within one month after the giving of such notice, and prosecuted without unreasonable delay.

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* This section was substituted for the original s. 28 by Act IX. of 1881, s. 4.

Nothing herein contained shall prejudice the right of any creditor or other claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively.

Letters to be granted to Administrator-General by his name of office.

29. All letters of administration granted to any Administrator-General in virtue of his office shall be granted to him by his name of office,

Authority given by such letters.

and all letters of administration heretofore granted to the Ecclesiastical Registrar or Administrator-General officially, or granted to any Administrator-General in virtue of his office, shall authorize the Administrator-General for the time being of the same Presidency to act as administrator of the estate to which such letters relate.

Grant of probate to Administrator-General named as executor by virtue of his office.

30. Every probate granted to any Administrator-General of a will wherein he is named as executor by virtue of his office shall be granted to him by his name of office, and shall authorize the Administrator-General for the time being of the same Presidency to act as executor of the estate to which such probate relates.

Transfer by private executor or administrator of interest under probate or letters.

31. Any private executor or administrator may, with the previous consent of the Administrator-General of the Presidency in which the property comprised in the probate or letters of administration is situate, by an instrument in writing under his hand,* notified in the local Gazette, transfer all estates, effects, and interests vested in him by virtue of such probate or letters to the Administrator-General by his name of office;

and thereupon the transferor shall be exempt from all liability as such executor or administrator, as the case may be, for any act or omission in respect of the said property after the date of the said transfer:

and the Administrator-General for the time being shall have the rights, and be subject to the liabilities which he would have had, and to which he would have been subject, if the probate or letters of administration, as the case may be, had been granted to him by his name of office at the date aforesaid.

Nothing herein contained shall be taken to exempt any such transferor from liability for acts and omissions in respect of the said property prior to the transfer.

Appointment of Official Trustee as trustee of assets carried to separate accounts.

32. Whenever the Administrator-General carries over assets to separate accounts in his books, he shall notify the fact in the local official Gazette; and he may, with the consent of the Official Trustee, and subject to such rules as the Governor-General in Council may from time to time prescribe in this behalf, appoint the Official Trustee to be the trustee of such assets; and upon such appointment such assets shall vest in the Official Trustee and his successors in office, and be held by him and them upon the same trusts as the same assets were held immediately before such appointment. And for the purposes of Act No. XVII. of 1864, such assets shall be deemed to have been vested in the Official Trustee under section 10 of that Act.

Vesting of estates, &c., in successor of Administrator-General.

33. All estates, effects, and interests which, at the time of the death, resignation, or removal from office of any Administrator-General, are vested in him by virtue of such letters of administration, probates, or transfers as aforesaid,

* Certain words of s. 31, referring to stamp-duty, which were repealed by Act I. of 1879, have been omitted. For stamp-duty, see now Sch. I., art. 60, cl. *c*, of that Act.

Act II. of 1874.

shall, upon every such death, resignation, or removal, cease to be vested in him, and shall vest in his successor in office immediately upon his appointment thereto.

All books, papers, and documents kept by such Administrator-General by virtue of his office, or as such executor or transferee as aforesaid, shall be transferred to, and vested in, his successor in office.

(b) Suits by and against the Administrator-General.

Administrator-General to sue and be sued in his name of office.

34. All suits and other proceedings commenced by or against any Administrator-General in his representative character may be brought by or against him by his name of office,

and no suit or other proceeding heretofore or hereafter commenced by or against any person as Administrator-General, either alone or jointly with any other person, shall abate by reason of the death, resignation, or removal from office of any such Administrator-General; but the same may, by order of the Court, and upon such terms as to the service of notices or otherwise as the Court may direct, be continued by or against his successor immediately upon his appointment, in the same manner as if no such death, resignation, or removal had occurred:

Suit not to abate by death, &c.

Provided that nothing hereinbefore contained shall render any such successor personally liable for any costs incurred prior to the order for continuing the suit against him.

Proviso as to costs.

35. If any suit be brought by a creditor against any Administrator-General in his representative character, the plaintiff shall be liable to pay the costs of the suit down to and including the decree, unless upon proof by affidavit or otherwise that not less than one month previous to the institution of the suit he had applied in writing to the Administrator-General, stating the amount and other particulars of the claim, and supporting the same by such evidence as, under the circumstances of the case, the Administrator-General was reasonably entitled to require, and that the Administrator-General had refused or neglected to register the claim according to the practice of his office.

Creditors' suits against Administrator-General.

If in any such suit judgment is pronounced in favour of the plaintiff, he shall, nevertheless, be only entitled to payment out of the assets of the deceased equally and rateably with the other creditors.

(c) Grant of Certificates by the Administrator-General.

36. Whenever any person* shall have died, whether within any of the said Presidencies or not, whether before or after the passing of this Act, and whether testate or intestate, and shall have left assets (whether moveable or immoveable, or both) within any of the said Presidencies, and the Administrator-General of such Presidency is satisfied that such assets do not exceed in the whole one thousand rupees in value, he may, after the lapse of one month from the death if he thinks fit, or before the lapse of the said month if he is requested so to do by writing under the hand of the executor or the widow or other person entitled to administer the effects of the deceased, grant, to any person claiming otherwise than as a creditor to be entitled to a share of such assets, certificates under his hand entitling

In what case Administrator-General may grant certificate.

* Certain words of s. 36, which were repealed by Act IX. of 1881, s. 5, have been omitted.

the claimant to receive the property therein mentioned, belonging to the estate of the deceased, to a value not exceeding in the whole one thousand rupees: Act II. of 1874.

Provided that no certificate shall be granted under this section where probate of the deceased's will or letters of administration of his effects has or have been granted, or in respect of any sum of money deposited in a Government Savings Bank.

No certificate where probate or administration granted, or for money in Government Savings Bank.

37. "If, in cases falling within section 36, no person claiming otherwise than as a creditor to be entitled to a share of the effects of the deceased obtains, within three months, a certificate from the Administrator-General under the same section, or letters of administration to the estate and effects of the deceased, and such deceased was not a Hindu, Muhammadan, Parsi, or Buddhist, or exempted under the Indian Succession Act, 1865, section 332, from the operation of that Act, the Administrator-General may administer the estate and effects without letters of administration, in the same manner as if such letters had been granted to him;"*

Grant of certificate to creditors.

and, if he neglect or refuse to take upon himself the administration of the estate and effects, he shall, upon the application of a creditor, and upon being satisfied of his title, grant a certificate in the same manner as if such creditor were entitled to a share of the effects of the deceased,

and such certificate shall have the same effect as a certificate granted under the provisions of the same section, and shall be subject to all the provisions of this Act which are applicable to such certificate:

Provided that the Administrator-General may, before granting such certificate, if he think fit, require the creditor to give reasonable security for the due administration of the estate and effects of the deceased.

Proviso.

38. The Administrator-General shall not be bound to grant any "certificate under section 36 or 37," † unless he be satisfied of the title of the claimant, and of the value of the assets of the deceased, either by the oath or affirmation of the claimant,‡ or by such other evidence as he requires.

Administrator-General not bound to grant certificate unless satisfied of claimant's title, &c.

39. A copy of any such certificate with a receipt annexed shall, when such copy and receipt are signed by the person to whom the certificate has been granted, be a full discharge for payment or delivery to him of the money or security for money therein mentioned, to the person paying or delivering the same:

Copy of certificate with receipt annexed, when signed by certificate-holder, to be a discharge.

but nothing in this Act shall preclude any executor or administrator of the deceased from recovering, from the person receiving the same, the amount remaining in his hands after deducting the amount of all debts or other demands lawfully paid or discharged by him in due course of administration.

Right of executor or administrator against certificate-holder.

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* This first paragraph of s. 37 was substituted for the original paragraph by Act II. of 1890, s. 11 (*1*).

† In s. 38 the words quoted were substituted for the original words by Act IX. of 1881, s. 6.

‡ Certain words of s. 38, which were repealed by Act IX. of 1881, s. 6, have been omitted.

Act II. of 1874.

Right of creditor against assets in hands of certificate-holder.

And any creditor or claimant against the estate of the deceased shall be at liberty to recover his debt or claim out of the assets received by such person and remaining in his hands unadministered, in the same manner and to the same extent as if such person had obtained letters of administration to the estate of the deceased.

Administrator-General not bound to take out administration on account of effects for which he has granted certificate.

40. The Administrator-General shall not be bound to take out letters of administration to the estate of any deceased person on account of the effects in respect of which he grants any such certificate, but he may do so if he discover any fraud or misrepresentation made to him, or that the value of the estate exceeded one thousand rupees.

Fee for certificate.

41. For every such certificate the administrator-General shall be entitled to charge a fee calculated aftert he rate of three rupees in the hundred on the amount mentioned in the certificate.

Transfer of certain assets from British India to executor or administrator in country of domicile for distribution.

41A.* Where a person not having his domicile in British India has died leaving assets both in British India and in the country in which he had his domicile at the time of his death, and proceedings for the administration of his estate with respect to assets in British India have been taken under section 36 or section 37, and there has been a grant of administration in the country of domicile with respect to the assets in that country,

the holder of the certificate granted under section 36 or section 37, or the Administrator-General, as the case may be, after having given such notices as the High Court may by any general rule to be made from time to time prescribe, for creditors and others to send in to him their claims against the estate of the deceased, and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of, may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.

(*d*) *Expenses of the Administrator-General's Establishment.*

Administrator-General to defray expenses of establishment.

42. The Administrator-General shall defray all the expenses of the establishment necessary for his office, and all other charges to which the said office is subject, except those for which express provision is made by this Act.

(*e*) *Accounts and Schedules.*

Administrator-General to keep separate account for each estate.

43. The Administrator-General of each of the said Presidencies shall enter into books, to be kept by him for that purpose, separate and distinct accounts of each estate, and of all such sums of money, bonds, and other securities for money, goods, effects, and things as come to his hands, or to the hands of any person employed by him or in trust for him under this Act; and likewise of all payments made by him on account of such estate, and of all debts due by or to the same, specifying the dates of such receipts and payments respectively.

* S. 41A was inserted by Act II. of 1890, s. 12.

Such books shall be kept in the Administrator-General's office, and shall be open for the inspection of all such persons, practitioners in the said Courts, and others, as may have occasion to inspect the same, at office hours, paying only such reasonable fee for the time being fixed by the Government, and published in the official Gazette of the Presidency to which the same may relate.

Accounts to be open to inspection on payment of fee.

44. The Administrator-General of each of the said Presidencies shall twice in every year, that is to say, on or before the first day of April, and on or before the first day of October, or on such other days as the Government, by any rules or orders to be published as aforesaid, may direct, exhibit and deliver, in the High Court at Calcutta, Madras, or Bombay, as the case may be—

Administrator-General to furnish half-yearly schedules.

(*a*) a schedule showing the gross amount of all sums of money received or paid by him on account of each estate in his charge, and the balances, during the period of six months ending severally on the thirty-first day of December and thirtieth day of June next before the day of delivering such schedule,

(*b*) a list of all bonds or other securities received on account of each of the said estates during the same period,

(*c*) a schedule of all administrations whereof the final balances have been paid over to the persons entitled to the same, during the same period, specifying the amount of such balances and the persons to whom paid.

Such schedules shall be filed of record in such High Court, and shall, within fourteen days afterwards, be published in the official Gazette of the Presidency by the Administrator-General;

Schedules to be filed and published.

and copies thereof in triplicate shall be delivered by such Administrator-General to the Government, and shall be sent by such Government to the Secretary of State for India, in order that such Secretary may, if he think fit, order the same to be deposited at the India Office for public inspection, and cause notices to be published in the London Gazette and other leading newspapers that such schedules are open to inspection there, or make such other orders respecting the same as he thinks fit.

Copies of schedules.

PART IV.

OF THE AUDIT OF THE ADMINISTRATOR-GENERAL'S ACCOUNTS.

45. The Government shall from time to time appoint auditors to examine the accounts of the Administrator-General at the times of the delivery of the said schedules, and also at any other time when the Government thinks fit.

Government to appoint auditors.

46. The auditors shall examine the schedules and accounts, and report to the Government—

Auditors to examine schedules, and report to Government.

(*a*) whether they contain a full and true account of everything which ought to be inserted therein,

(*b*) whether the books, which by this Act, or by any such general rules and orders as hereinafter mentioned, are directed to be kept by the Administrator-General, have been duly and regularly kept, and

Act II. of 1874.

(c) whether the assets and securities have been duly kept and invested and deposited in the manner prescribed by this Act, or by any such rules and orders to be made as aforesaid.

Auditors to summon witnesses, and to call for books, &c.

47. Every auditor shall have power to summon as well the Administrator-General as any other person whose presence he thinks necessary, to attend him from time to time; and to examine the Administrator-General or other person if he thinks fit, on oath or affirmation to be by him administered; and to call for all books, papers, vouchers, and documents which appear to him to be necessary for the purposes of the said reference.

If the Administrator-General or other person, when summoned, refuses or, without reasonable cause, neglects to attend or to produce any book, paper, voucher, or document so required, or attends and refuses to be sworn or make an affirmation, or refuses to be examined, the auditors shall certify such neglect or refusal in writing to the High Court at the Presidency-town;

Penalty for non-attendance.

and every person so refusing or neglecting shall thereupon be punishable in like manner as if such refusal or neglect had been in contempt of the said High Court.

Costs of preparing schedules, &c.

48. The costs and expenses of preparing and publishing the said schedules and copies thereof, and of every such reference and examination as aforesaid, shall be defrayed by all the estates to which such shedules or accounts relate.

Such costs and expenses, and the portion thereof to be contributed by each of the said estates, shall be ascertained and settled by the auditors, subject to the approval of the Government, and shall be paid out of the said estates accordingly by the Administrator-General.

Special report to Government if accounts appear incorrect.

49. If upon any such reference and examination the auditors see reason to believe that the said schedules do not contain a true and correct account of the matters therein contained, or which ought to be therein contained, or that the assets have not been duly kept and invested, or deposited in the manner directed by this Act, or by any such rules and orders as aforesaid, or that the Administrator-General has failed to comply with the provisions and directions of this Act, or of any such rules and orders, they shall report accordingly to the Government.

Proceedings upon such report.

50. The Government may refer every such report as last aforesaid to the consideration of the Advocate-General for the Presidency, who shall thereupon, if he think fit, proceed summarily against the defaulter, or his executor or administrator in the High Court in the Presidency-town, by petition for an account, or to compel obedience to this Act, or to such rules and orders as aforesaid, or otherwise as he may think fit, in respect of all or any of the estates then or formerly under the administration of such defaulter;

and the said Advocate-General may exhibit interrogatories to the said Administrator-General, executor, or administrator (hereinafter called the defendant), who shall be bound to answer the same as fully as if a commission had been issued under the provisions of the Code of Civil Procedure* for his examination upon the said interrogatories.

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* This reference to Act VIII. of 1859 should now be read as applying to Act XIV. of 1882.—See s. 3 of the latter Act.

The Court shall have power upon any such petition to compel the attendance in Court of the defendant, and any witnesses who may be thought necessary, and to examine them orally or otherwise as the said Court thinks fit, and to make and enforce such order or orders as the Court thinks just.

51. The costs, including those of the Advocate-General and of the reference to him, if the same be directed by the Court to be paid, shall be defrayed either by the defendant or out of the estates rateably as the said Court directs; and, whenever any costs are recovered from the defendant, the same shall be repaid to the estates by which they have been in the first instance contributed; and the Court may, if it think fit, order the defendant to receive his costs out of the said estates.

Costs of reference, &c., how to be defrayed.

PART V.

OF THE COMMISSION OF THE ADMINISTRATOR-GENERAL.

52. The Administrator-General of each of the said Presidencies, under any letters of administration granted to him in his official character, or under any probate granted to him of a will wherein he is named as executor by virtue of his office, or under any probates or letters of administration vested in him by section 8 or section 31, shall be entitled to receive a commission at the following rates respectively, namely :—

Commission to be received by Administrators-General.

The Administrator-General of Bengal at the rate of three *per centum*, and the Administrators-General of Madras and Bombay respectively at the rate of five *per centum*, upon the amount or value of the assets which they respectively collect and distribute in due course of administration.

53. The last preceding section shall not apply to cases in which the property of an officer or soldier dying on service comes to the hands of the Administrator-General of any of the said Presidencies, under the 9th or the 12th section of the Statute called the Regimental Debts Act, 1863 ;*

Section 52 not to apply to property of officers and soldiers dying on service.

and such Administrator-General shall not take a percentage on any such property exceeding three *per centum* on the gross amount coming to his hands after the passing of the Administrator-General's Act, 1865,† if preferential charges as defined by the 4th section of the said Statute have been previously paid, or on the gross amount remaining in his hands after payment by him of such charges, as the case may be.

Commission on such property.

54. The Administrator-General shall be entitled to reimburse himself for any payments made by him in respect of any estate in his charge, which a private administrator of such estate might have lawfully made; but, save as aforesaid, the commission to which the Administrator-General of each of the said three Presidencies shall be entitled is intended to cover, not merely the expense and trouble of collecting the assets, but also his trouble and responsibility in distributing them in due course of administration.

What expenses, &c., commission is to cover.

It is therefore enacted that one half of such commission shall be payable to, and retained by, such Administrator-General upon the collection of the assets, and the other half

How payable.

* 26 and 27 Vic., c. 57, printed in the "Collection of Statutes relating to India," Ed. 1881, Vol. II., p. 770.

† Act IV. of 1865 was repealed by Act XXIV. of 1867.

Act II. of 1874.

thereof shall be payable to the Administrator-General who distributes any assets in the due course of administration, and may be retained by him upon such distribution.

Commission retained to be deemed a distribution.

The amount of the commission lawfully retained by an Administrator-General upon the distribution of assets shall be deemed a distribution in the due course of administration within the meaning of this Act.

Explanation.—The carrying of assets to separate accounts in the books of the Administrator-General notified as hereinbefore provided, and the transfer of assets to the Official Trustee, shall each be deemed to be a distribution within the meaning of this section.

Commission of Administrator-General of Bengal may be raised and again reduced.

55. The Governor-General in Council may from time to time order the rate of commission hereinbefore authorized to be received by the Administrator-General of Bengal to be raised to any rate not exceeding five *per centum* upon the amount or value of the assets which he collects and distributes in due course of administration, and again to be reduced.

Commission of Administrators-General of Madras and Bombay may be reduced and again raised.

The Governments of the Presidencies of Fort St. George and Bombay respectively may, with the sanction of the Governor-General in Council, from time to time order the aforesaid rate of commission hereby authorized to be received by the Administrators-General of Madras and Bombay respectively to be reduced, and again to be raised:

Proviso.

Provided that the commission so to be received shall not at any time exceed five *per centum* of the assets collected, and that no person now holding the office of Administrator-General of Bengal, Madras, or Bombay shall, by any such order, be deprived of the right to receive and retain, for his own use, a commission at the rate of three *per centum* in respect of all assets collected and actually administered by him.

Commission on assets collected beyond Presidency.

55A.* Notwithstanding anything hereinbefore contained, an Administrator-General of a Presidency obtaining probate or letters of administration operating in another Presidency shall be entitled to the same rate of commission in respect of the collection and distribution of assets collected in such Presidency as the Administrator-General of such Presidency would have been entitled to if such assets had been collected and distributed by him, and to no higher rate.

Commission not to be charged by executor or administrator other than Administrator-General.

56. No person other than the Administrator-General acting officially shall receive or retain any commission or agency charges for anything done as executor or administrator under any probate or letters of administration, or letters *ad colligenda bona*, which have been granted by the Supreme Court or High Court at Fort William in Bengal since the passing of Act No. VII. of 1849† (*for the appointment of an Administrator-General in Bengal*), or by either of the Supreme or High Courts at Madras and Bombay since the passing of Act No. II. of 1850† (*to amend and extend to Madras and Bombay Act No. VII. of 1849*), or which have been or shall be granted by any Court of competent jurisdiction within the meaning of sections 187 and 190 of the Indian Succession Act, 1865;

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* S. 55A was inserted by Act IX. of 1881, s. 7.

† Acts VII. of 1849 and II. of 1850 were repealed by Act VIII. of 1855, s. 56.

but this enactment shall not prevent any executor or other person from having the benefit of any legacy bequeathed to him in his character of executor, or by way of commission or otherwise.

Bequest in favour of executors not affected.

PART VI.

MISCELLANEOUS.

57. The Government may from time to time make rules consistent with the provisions of this Act—

Power to make rules—

(*a*) for the safe custody of the assets and securities which come to the hands or possession of the Administrator-General;

for custody of assets;

(*b*) for the remittance to the India Office of all sums of money payable or belonging to persons resident in Europe, or in other cases where such remittances are required;

for remittance of money;

(*c*) generally for the guidance of the Administrator-General in the discharge of his duties;

for guidance of Administrator-General.

and may by such rules amongst other things direct what books, accounts, and statements, in addition to those mentioned in this Act, shall be kept by the Administrator-General, and in what form the same shall be kept, and what entries the same shall contain, and where the same shall be kept, and where and how the assets and securities belonging to the estates to be administered by such Administrator-General shall be kept and invested, or deposited pending the administration thereof, and how and at what rate or rates of exchange any remittances thereof shall be made.

Unless any such rules are made and published, the rules now in force in each of the said Presidencies, so far as the same are not inconsistent with this Act, shall be of the same force and effect as if the same had been made and published hereunder.

Proviso as to rules now in force.

58. Such rules shall be published in the Gazette of India, the Fort St. George Gazette, or the Bombay Government Gazette, as the case may be, and the several Administrators-General shall obey and fulfil the same, and the same shall be a full authority and indemnity for all persons acting in pursuance thereof.

Publication of new rules.

59. The Governor-General in Council may from time to time, either by general rule, or by a special order in a particular case, decide any question as to the time at which any commission accruing to the Administrator-General in his official capacity shall be deemed to have been payable; and such decision shall bind every Administrator-General and the estates held by him in his official capacity.

Power to decide when commission shall be deemed payable.

60. Any order made under this Act by any Court shall have the same effect, and be executed in the same manner, as a decree.

Orders of Court to be equivalent to decrees.

60A.* The Administrator-General may, whenever he desires, for the purposes of this Act, to satisfy himself regarding any question of fact, examine upon oath or affirmation

Power to examine on oath.

* S. 60A was inserted by Act IX. of 1881, s. 8.

Act II. of 1874.

(which he is hereby authorized to administer or take) any person who is willing to be so examined by him regarding such question.

False evidence.

61. Whoever, having been sworn or having taken an affirmation under this Act, makes, upon any examination authorized by this Act, a statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding.

Assets unclaimed for fifteen years to be transferred to Government.

62. All assets in the official charge of the Administrator-General of any of the said Presidencies, and appearing from the official books and accounts of the Ecclesiastical Registrar and of the Administrator-General of any of those Presidencies, or from the official books and accounts of any of those officers, to have been in official custody for a period of fifteen years or upwards without any claim thereto having been made and allowed, shall be transferred and paid to the Comptroller-General of Accounts, or to the Accountant-General to the Government of Fort St. George or Bombay, as the case may be, and be carried to the account and credit of the Government of India for the general purposes of government ;

and the receipt of the said Comptroller-General or Accountant-General, as the case may be, shall be a full indemnity and discharge to the said Administrator-General for any such transfer or payment:

Proviso.

Provided that this Act shall not authorize the transfer or payment of any such proceeds as aforesaid, pending any suit heretofore or hereafter instituted in respect thereof.

Mode of proceeding by claimant to recover principal money so transferred.

63. If any claim be hereafter made to any part of the securities, moneys, or proceeds carried to the account and credit of the Government of India under the provisions of this Act, and if such claim be established to the satisfaction of the Comptroller-General or the Accountant-General to the Government of Fort St. George or Bombay, as the case may be, the Government of India shall pay to the claimant the amount of the principal so carried to its account and credit, or so much thereof as appears to be due to the claimant.

If the claim be not established to the satisfaction of the said Comptroller-General or Accountant-General, as the case may be, the claimant may apply by petition to the High Court at the Presidency-town against the Secretary of State for India, and, after taking evidence, either orally or on affidavit in a summary way as the Court thinks fit, the Court shall make such order on the petition for the payment of such portion of the said principal sum as justice requires, and such order shall be binding on all parties to the suit,

and the Court may direct by whom the whole or any part of the costs of each party shall be paid.

District Judge in certain cases to take charge of property of deceased persons, and to report to Administrator-General.

64. Whenever any person, other than a Hindu, Muhammadan, Parsi,* or Buddhist, or a person exempted under the Indian Succession Act, 1865, section 332, from the operation of that Act, dies, leaving assets within the limits of the jurisdiction of a District Judge, the District Judge shall report the circumstance without delay to the Administrator-General of the Presidency, stating the following particulars, so far as they may be known to him :—

(*a*) the amount and nature of the assets,

* The word " Parsi " in s. 64 was inserted by Act IX. of 1881, s. 2.

(*b*) whether or not the deceased left a will, and, if so, in whose custody it is, Act II. of 1874.

and, on the lapse of one month from the date of the death,

(*c*) whether or not any one has applied for probate of the will of the deceased or letters of administration to his effects.

The District Judge shall retain the property under his charge, or appoint an officer under the provisions of the Indian Succession Act, 1865, section 239, to take and keep possession of the same until the Administrator-General has obtained letters of administration, or until some other person has obtained such letters or a certificate from the Administrator-General under the provisions of this Act, when the property shall be delivered over to the person obtaining such letters of administration or certificate, or, in the event of a will being discovered, to the person who may obtain probate of the will.

* The District Judge may cause to be paid out of any property of which he or such officer has charge, or out of the proceeds of such property or of any part thereof, such sums as may appear to him to be necessary for all or any of the following purposes, namely :—

(*a*) the payment of the expenses of the funeral of the deceased and of obtaining probate of his will or letters of administration to his estate and effects,

(*b*) the payment of wages due for services rendered to the deceased, within three months next preceding his death, by any labourer, artisan, or domestic servant, and

(*c*) the relief of the immediate necessities of the family of the deceased,

and nothing in section 279, section 280, or section 281 of the Indian Succession Act, 1865, or in any other law for the time being in force with respect to rights of priority of creditors of deceased persons, shall be held to affect the validity of any payment so caused to be made.

65. Nothing in this Act is intended to require the Administrator-General to take proceedings to obtain letters of administration to the estate or effects of any officer or soldier, or other person subject to any Articles of War, unless when the Administrator-General is duly authorized or required so to do by the Military Secretary to Government, or by a Committee of Adjustment or other officers or persons acting under any law for the time being in force relating to the payment of regimental debts;

Act not to require administration of estates of soldiers unless Administrator-General authorized by Military Secretary or Committee of Adjustment.

nor is anything in this Act contained intended to interfere with or alter the provisions of any Act of Parliament for regulating the payment of regimental debts and the distribution of the effects of officers and soldiers dying in the service of Her Majesty in India, or of any Articles of War.

66. Nothing contained in the Indian Succession Act, 1865, or the Indian Companies Act, 1882,† shall be taken to supersede or affect the rights, duties, and privileges of the Administrators-General and Officiating Administrators-General of Bengal, Madras, and Bombay, respectively.

Succession Act and Companies Act not to affect Administrator-General.

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* This paragraph of s. 64 was added by Act II. of 1890, s. 13.

† The reference to Act X. of 1866 has been amended in accordance with Act VI. of 1882, s. 2.

Act II. of 1874.

Saving of provisions of Presidency Police Acts as to petty estates.

And nothing contained in the Indian Succession Act, 1865, or in this Act, or in the said Act No. XXIV. of 1867,* shall be deemed to affect, or to have affected, any provisions† for the time being in force relating to the moveable property under two hundred rupees in value of persons dying intestate within any of the Presidency-towns, which shall be or has been taken charge of by the police for the purpose of safe custody.

Compliance with requisitions for returns.

67.‡ The Administrator-General shall comply with such requisitions as may be made by the Government for returns and statements, in such form and manner as the Government may deem proper.

PART VII.§

DIVISION OF THE PRESIDENCY OF BENGAL INTO PROVINCES.

Division of the Presidency of Bengal into Provinces.

68. (*1*) Notwithstanding anything in the foregoing provisions of this Act, the Governor-General in Council, upon the occurrence of any vacancy in the office of the Administrator-General of Bengal, may, by notification in the Gazette of India,—

(*a*) divide the Presidency of Bengal, as defined in this Act, into so many Provinces as he thinks fit,

(*b*) define the limits of each of those Provinces, and

(*c*) appoint an Administrator-General for each Province,

and, subject to the provisions of this section, the following consequences shall thereupon ensue, namely :—

(i) the office of Administrator-General of Bengal shall cease to exist :

(ii) the Administrator-General of a Province shall have the like rights and privileges, and perform the like duties, in the territories and dominions included in the Province, as the Administrator-General of Bengal had and performed as Administrator-General therein :

(iii) the functions of the Government under this Act shall, as regards the territories and dominions included in a Province, be discharged by the Governor-General in Council :

(iv) the functions of whatsoever kind assigned by the foregoing provisions of this Act to the High Court at Calcutta in respect of the territories and dominions included in a Province shall be discharged by such High Court as the Governor-General in Council may, by notification in the Gazette of India, appoint in this behalf, and probate or letters of administration granted to the Administrator-General of the Province by the High Court so appointed shall have the same effect throughout the Presidency of

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* Act XXIV. of 1867 is repealed by this Act.—See s. 2, *supra*.

† See Bengal Act IV. of 1866, ss. 100, 101 ; Madras Act III. of 1888, s. 30 ; and (as to Bombay) Act XIII. of 1856, ss. 113, 114.

‡ S. 67 was added by Act II. of 1890, s. 14.

§ Part VII. was added by Act II. of 1890, s. 15.

Bengal, as defined in this Act, or, if the Court so directs, throughout British India, as, but for the abolition of the office of Administrator-General of Bengal, probate or letters of administration granted to the holder of that office by the High Court at Calcutta would have had: Act II. of 1874.

(v) in the foregoing provisions of this Act the word "Presidency" shall be deemed to include a Province, the expression "Presidency-town," the place of sitting of a High Court appointed by the Governor-General in Council under clause (iv) of this sub-section, and the expression "Advocate-General," a Government Advocate or other officer appointed by the Governor-General in Council to discharge for a Province the functions under this Act of an Advocate-General for a Presidency:

(vi) the provisions of this Act with respect to the commission of the Administrator-General of Bengal shall regulate the commission payable to the Administrator-General of a Province: and,

(vii) generally, the provisions of the foregoing sections of this Act with respect to the High Court at Calcutta, and the provisions of those sections or of any other enactment with respect to the Administrator-General of Bengal, shall, in relation to a Province, be construed, so far as may be, to apply to the High Court and Administrator-General, respectively, appointed for the Province under this section.

(2) Any proceeding which was commenced before the publication of the notification dividing the Presidency of Bengal into Provinces, and to or in which the Administrator-General of Bengal in his representative character was a party or was otherwise concerned, shall be continued as if the notification had not been published, and the Administrator-General of the Province in which the Town of Calcutta is comprised shall, for the purposes of the proceeding, be deemed to be the successor in office of the Administrator-General of Bengal.

(3) The Court of the Recorder of Rangoon shall be deemed to be a High Court for the purposes of clause (iv) of sub-section (1).

(4) Notwithstanding any division of the Presidency of Bengal, as defined in this Act, into Provinces under this section, the Administrator-General of the Province in which the Town of Calcutta is comprised shall be deemed to be the Administrator-General for the whole of the said Presidency for the purposes of the Regimental Debts Act, 1863.*

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* 26 and 27 Vic., c. 57.

Act II. of 1874.

APPENDIX.

List of Native States included within the Presidencies of Bengal, Madras, and Bombay, respectively, by notification under section 3 of Act II. of 1874.

Presidency.	States.	Year, Part, and page of Gazette of India.
BENGAL ...	BENGAL—	
	Hill Tipperah	1878, Part I., p. 438.
	Kuch Bihar	
	The Tributary Mahals of Chota Nagpore	
	The Tributary Mahals of Cuttack	
	ASSAM—	
	The States in the Jaintia and Khasi Hills	
	Manipur	
	NORTH-WESTERN PROVINCES—	
	Rámpur	
	Tehri (Garhwál)	
	...	
	PUNJAB—	
	Bághal	
	Baghát	
	Balsan	
	Bashahr	
	Bhajji	
	Bhawalpur	
	Bijá	
	Chamba	
	Darkuti	
	Dhámi	
	Dujáná	
	Faridkot	
	Hindúr (Ná ágarh)	
	Jabbal	
	Jummoo and Kashmir ...	
	Jind	
	Kahlúr (Biláspur)	
	Kalsia	
	Kapurthala	
	Keonthal	
	Kumhársani	
	Kunhiár	
	Kuthár	
	Loháru	
	Mailog	
	Máler Kotla	
	Mandi	
	Mángul	
	Nábha	
	Pataudi	
	Patiála	
	Sángri	

List of Native States included within the Presidencies of Bengal, Madras, and Bombay, respectively, by notification under section 3 of Act II. of 1874—contd. Act II. of 1874.

Presidency.	States.	Year, Part, and page of Gazette of India.
BENGAL—*contd.*	PUNJAB—*contd.*	
	Sirmúr (Náhan)	
	Suket	
	Taroch	
	RAJPUTANA AGENCY—	
	Bhurtpore	
	Bikanir	
	Bundi	
	Dholpur	
	Jaipur	
	Jaisalmir	
	Jhaláwár...	
	Jodhpur or Márwár... ...	
	Kerauli	
	Kishengarh	
	Kotah	
	Lawa	
	The Merwara parganas belonging to Meywár and Marwár ...	
	Shahpura	
	Tonk (with the exception of Nimbhera, Pirawa, and Sironj) ...	
	Ulwar	
	CENTRAL INDIA AGENCY—	
	Gwalior (the whole State, excepting the Sir Subahship of Malwa and certain districts under the Sir Subah of Esangarh, which are included in the Presidency of Bombay)	1878, Part I., p. 438.
	Bandelkand and Baghelkhand States and Chiefships—	
	Ajaigarh	
	Alipura	
	Báoni	
	Behat	
	Behri	
	Beronda	
	Bhaisanda	
	Bijáwar	
	Bijna	
	Chatrapur	
	Chirkhari	
	Dhattia	
	Dhurwai	
	Gerauli	
	Gaurihar	
	Jassu	

Act II. of 1874. *List of Native States included within the Presidencies of Bengal, Madras, and Bombay, respectively, by notification under section 3 of Act II. of 1874*—contd.

Presidency.	States.	Year, Part, and page of Gazette of India.
BENGAL—*concld.*	CENTRAL INDIA AGENCY—*contd.*	
	Bandelkand and Baghelkhand States and Chiefships—concld.	
	Jigni	
	Kamiadhana	
	Kamta Rijola	
	Kathi	
	Lughasi	
	Maihir	
	Nágod	
	Naiagaon	
	Orchha	
	Pahari Banka	
	Pahara	
	Paldeo	
	Punna	
	Rewah	
	Sampthar	
	Sohawal	
	Surila	
	Taraon	
	Tori Fatehpur	
	Holkar's district of Alampur...	1878, Part I., p. 438.
MADRAS ...	Banganapalle	
	Cochin	
	Puddukottai	
	Sandur	
	Travancore	
	The Dominions of His Highness the Nizam of Hyderabad... ...	
BOMBAY ...	Baroda	
	Cambay	
	Cutch	
	Jawar	
	Jinjira	
	Khairpur in Sind	
	Kolharpur	
	Narukote	
	Peint*	
	The Satara Jagirs	
	Savanpur	
	Savantwari	
	The Southern Mahratta States ...	
	The States in Kandesh	
	Ditto Kattywar ...	

* Peint is now part of British India.—See Gazette of India, 1885, Part I., p. 518.

List of Native States included within the Presidencies of Bengal, Madrás, and Bombay, respectively, by notification under section 3 of Act II. of 1874—contd. Act II. of 1874.

Presidency.	States.	Year, Part, and page of Gazette of India.
BOMBAY—*contd.*	The States in Mahi Kanta ...	
	Ditto Palanpur	
	Ditto Rewa Kanta ...	
	Ditto Surat	
	RAJPUTANA AGENCY—	
	Bánswára	
	Dúngarpur	
	The Jhalra Patan, Districts of—	
	Dag	
	Gangvár	
	Pach Pahár	
	Oodeypur or Meywar... ...	
	Pertabgarh	
	Serohi	
	The Tonk, Districts of—	
	Nimbhera	
	Pirawa	
	Sironj	
	THE FEUDATORY STATES IN THE CENTRAL PROVINCES—	
	Bámra	1878, Part I., p. 438.
	Bastár	
	Kánker	
	Karond or Kalahandi ...	
	Kawárda	
	Khairágarh	
	Makrái	
	Nundgaon	
	Patna	
	Ráigarh Bárgarh ...	
	Rairakhol	
	Sárangarh	
	Satki	
	Sonpur	
	CENTRAL INDIA AGENCY—	
	Barwai	
	Barwani	
	Bhopal (the whole State) ...	
	Devas	
	Dhar	
	Indore (the whole State, excepting the district of Alampur) ...	
	Jaora	
	Jhalna	

Act II. of 1874.

List of Native States included within the Presidencies of Bengal, Madras, and Bombay, respectively, by notification under section 3 of Act II. of 1874—concld.

Presidency.	States.	Year, Part, and page of Gazette of India.
BOMBAY—*concld.*	CENTRAL INDIA AGENCY—*contd.*	1878, Part I., p. 438.
	Jobat	
	Kathiwara	
	Kilchipur	
	Maksúdangarh	
	Mathwar	
	Muhammadgarh	
	Narsinghgarh	
	Rajgarh	
	Rajpur Ali...	
	Ratlam	
	Rattan Mal	
	Sailána	
	Sitaman	
	Gwalior, Districts of—	
	Agar ...	
	Amjhira ...	
	Bag ...	
	Dikthan ...	
	Mandisur ...	With the several parganas subordinate thereto, included in the charge of Sindhia's Sir Subah of Malwa.
	Nimach ...	
	Sagor ...	
	Shujawalpur...	
	Sonkach ...	
	Ujjain ...	
	Bhilsa ...	With the several parganas subordinate thereto, which form part of the charge of Sindhia's Sir Subah of Esangarh.
	Ganj Baroda.	
	Malhargarh ...	
	The States under the Bhil Agency.	
	Ditto Deputy Bhil Agency.	
	Ditto Gunah Agency.	
	Ditto Western Malwa Agency.	
	BALUCHISTAN AGENCY—	1890, Part I., p. 247.
	The territories of His Highness the Khan of Kelat ...	
	The territories administered by the Agent to the Governor-General in Baluchistan as such Agent ...	

ACT III. OF 1874.*

MARRIED WOMEN'S PROPERTY ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 24TH FEBRUARY 1874.

An Act to explain and amend the law relating to certain Married Women and for other purposes.

WHEREAS it is expedient to make such provision as hereinafter appears for the enjoyment of wages and earnings by women married before the first day of January 1866, and for insurances on lives by persons married before or after that day :

Preamble.

And whereas by the Indian Succession Act, 1865, section 4, it is enacted that no person shall by marriage acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property which he or she could have done if unmarried :

And whereas by force of the said Act all women to whose marriages it applies are absolute owners of all property vested in, or acquired by, them, and their husbands do not by their marriage acquire any interest in such property, but the said Act does not protect such husbands from liabilities on account of the debts of their wives contracted before marriage, and does not expressly provide for the enforcement of claims by or against such wives ;

It is hereby enacted as follows :

I.—Preliminary.

Short title.

1. This Act may be called "The Married Women's Property Act, 1874 :"

Extent and application.

2. It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty.

But nothing herein contained applies to any married woman, who, at the time of her marriage, professed the Hindu, Muhammadan, Buddhist, Sikh, or Jaina religion, or whose husband, at the time of such marriage, professed any of those religions.

And the Governor-General in Council may, from time to time, by order, either retrospectively from the passing of this Act, or prospectively, exempt from the operation of all or any of the provisions of this Act the members of any race, sect, or tribe, or part of a race, sect, or tribe, to whom he may consider it impossible or inexpedient to apply such provisions.

The Governor-General in Council may also revoke any such order, but not so that the revocation shall have any retrospective effect.

All orders and revocations under this section shall be published in the *Gazette of India*.

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* Act III. of 1874 has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum.—See *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504.

It has been extended, under the same Act, to the Scheduled District of the North-Western Provinces Tarái.—See *Gazette of India*, Sep. 23, 1876, Pt. I., p. 505.

Act III. of 1874.

The fourth section of the said Indian Succession Act shall not apply, and shall be deemed never to have applied, to any marriage one or both of the parties to which professed, at the time of the marriage, the Hindu, Muhammadan, Buddhist, Sikh, or Jaina religion.

3. [*Repealed by Act XII. of 1876.*]

II.—Married Women's Wages and Earnings.

4.* The wages and earnings of any married woman acquired or gained by her after the passing of this Act, in any employment, occupation, or trade carried on by her, and not by her husband,

Married women's earnings to be their separate property.

and also any money or other property so acquired by her through the exercise of any literary, artistic, or scientific skill,

and all savings from, and investments of, such wages, earnings, and property,

shall be deemed to be her separate property, and her receipts alone shall be good discharges for such wages, earnings, and property.

III.—Insurances by Wives and Husbands.

5.† Any married woman may effect a policy of insurance on her own behalf and independently of her husband; and the same and all benefit thereof, if expressed on the face of it to be so effected, shall enure as her separate property, and the contract evidenced by such policy shall be as valid as if made with an unmarried woman.

Married woman may effect policy of insurance.

6.‡ A policy of insurance effected by any married man on his own life, and expressed on the face of it to be for the benefit of his wife, or of his wife and children, or any of them, shall enure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband, or to his creditors, or form part of his estate.

Insurance by husband for benefit of wife.

When the sum secured by the policy becomes payable, it shall, unless special trustees are duly appointed to receive and hold the same, be paid to the Official Trustee of the Presidency in which the office at which the insurance was effected is situate, and shall be received and held by him upon the trusts expressed in the policy, or such of them as are then existing.

And in reference to such sum he shall stand in the same position in all respects as if he had been duly appointed trustee thereof by a High Court under Act No. XVII. of 1864 (*to constitute an office of Official Trustee*), section 10.

Nothing herein contained shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of assurance which may have been effected with intent to defraud creditors.

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* Compare 33 and 34 Vic., c. 93, s. 1, which was repealed by 45 and 46 Vic., c. 75, s. 22.

† Compare 33 and 34 Vic., c. 93, s. 10, para. 1.

‡ Compare 33 and 34 Vic., c. 93, s. 10, para. 2.

IV.—Legal Proceedings by and against Married Women.

7.* A married woman may maintain a suit in her own name for the recovery of property of any description which, by force of the said Indian Succession Act, 1865, or of this Act, is her separate property; and she shall have, in her own name, the same remedies, both civil and criminal, against all persons, for the protection and security of such property, as if she were unmarried, and she shall be liable to such suits, processes, and orders in respect of such property as she would be liable to if she were unmarried.

Married women may take legal proceedings.

8. If a married woman (whether married before or after the first day of January 1866†) possesses separate property, and if any person enters into a contract with her with reference to such property, or on the faith that her obligation arising out of such contract will be satisfied out of her separate property, such person shall be entitled to sue her, and, to the extent of her separate property, recover against her whatever he might have recovered in such suit had she been unmarried at the date of the contract, and continued unmarried at the execution of the decree:‡

Wife's liability for post-nuptial debts.

Provided that nothing herein contained shall affect the liability of a husband for debts contracted by his wife's agency, express or implied, or render a married woman liable to arrest or to imprisonment in execution of a decree.

V.—Husband's Liability for Wife's Debts.

9.§ A husband married after the thirty-first day of December 1865 shall not, by reason only of such marriage, be liable to the debts of his wife contracted before marriage, but the wife shall be liable to be sued for, and shall, to the extent of her separate property, be liable to satisfy such debts as if she had continued unmarried:

Husband not liable for wife's ante-nuptial debts.

Provided that nothing contained in this section shall‖ invalidate any contract into which a husband may, before the passing of this Act, have entered in consideration of his wife's ante-nuptial debts.

Proviso.

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* Compare 33 and 34 Vic., c. 93, s. 11.
† See the Indian Succession Act, 1865, s. 331.
‡ *Archer* v. *Watkins*, 8 B. L. R. 372.
§ Compare 33 & 34 Vic., c. 93, s. 12.
‖ Here certain words, repealed by Act XII. of 1891, have been omitted.

Act IV. of 1874.

ACT IV. OF 1874.*

THE FOREIGN RECRUITING ACT.

RECEIVED THE G-G.'S ASSENT ON THE 24TH FEBRUARY 1874.

An Act to control recruiting in British India for the service of Foreign States.

Preamble.

WHEREAS it is expedient that the Governor-General in Council should exercise full control over recruiting in British India for the service of Foreign States; It is hereby enacted as follows :—

Short title.

1. This Act may be called "The Foreign Recruiting Act, 1874 :"

Local extent.

It extends to the whole of British India.

Commencement.

[*Repealed by Act XII. of 1876.*]

2. In this Act—

"Foreign State" defined.

"Foreign State" includes any person or persons exercising, or assuming to exercise, the powers of Government in or over any country, colony, province, or people beyond the limits of British India.

Power to prohibit or permit recruiting.

3. If any person is, within the limits of British India, obtaining or attempting to obtain recruits for the service of any Foreign State in any capacity, the Governor-General in Council, may, by order in writing signed by a Secretary to the Government of India, either prohibit such person from so doing, or permit him to do so, subject to any conditions which the Governor-General in Council thinks fit to impose.

Power to impose conditions.

4. The Governor-General in Council may from time to time, by general order notified in the *Gazette of India*, either prohibit recruiting for the service of any Foreign State, or impose upon such recruiting any conditions which he thinks fit.

Power to rescind or vary orders.

5. The Governor-General in Council may rescind or vary any order made under this Act in such manner as he thinks fit.

Offences.

6. Whoever, in violation of the prohibition of the Governor-General in Council, or of any condition subject to which permission to recruit may have been accorded,

(*a*) induces or attempts to induce any person to accept, or agree to accept, or to proceed to any place with a view to obtaining, any commission or employment in the service of any Foreign State, or

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* Act IV. of 1874 has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts : The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum.—See *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504.

It has been extended under the same Act to the Scheduled District of the North-Western Provinces Tarái.—See *Gazette of India*, Sep. 23, 1876, Pt. I., p. 505.

The Foreign Enlistment Act (33 & 34 Vic., c. 90) applies only when the recruiting is for the service of any foreign State *at war* with any foreign State at peace with Her Majesty.

(*b*) knowingly aids in the engagement of any person so induced, by forwarding or conveying him or by advancing money or in any other way whatever, Act VIII. of 1874.

shall be liable to imprisonment for a term which may extend to seven years, or to fine to such amount as the Court thinks fit, or to both.

Place of trial.

7. Any offence against this Act may be enquired into and tried, as well in any district in which the person accused may be found as in any district in which it might be enquired into and tried under the provisions of the Code of Criminal Procedure.*

ACT VIII. OF 1874.

RECEIVED THE G.-G.'S ASSENT ON THE 7TH APRIL 1874.

An Act to provide for the exercise of the powers hitherto exercised by the Lieutenant-Governor and Board of Revenue of Bengal in the territories forming the Chief Commissionership of Assam.

Preamble.

WHEREAS the territories mentioned in the schedule hereto annexed have been taken under the direct management of the Governor-General in Council, and have been formed into a Chief Commissionership, called the Chief Commissionership of Assam, and a Chief Commissioner has been appointed for the same :

And whereas it is expedient to provide for the exercise within the said territories of the powers heretofore exercised therein, under or by virtue of any law or regulation, by the Lieutenant-Governor of Bengal and the Board of Revenue for the Lower Provinces of the Presidency of Fort William in Bengal, respectively ; It is hereby enacted as follows :—

Powers of Lieutenant-Governor and Board transferred to Governor-General in Council.

1. All powers over the whole or any portion of the said territories which, at the time of the formation of the said Chief Commissionership, were, under or by virtue of any law or regulation, vested in, or exercisable by, the said Lieutenant-Governor or Board of Revenue, shall be taken to have been, on the formation of the said Chief Commissionership, transferred to, and vested in, the Governor-General in Council.

Delegation of such powers.

2. The Governor-General in Council may, from time to time, delegate to the said Chief Commissioner all or any of the said powers, and withdraw any powers so delegated.

3. [*Repealed by Act XII. of 1891.*]

THE SCHEDULE.

Kámrúp.	Gáro Hills.
Darrang.	Khási and Jaintiá Hills.
Nowgong.	Nága Hills.
Sibságar.	Cachar.
Lakhimpur.	Goálpárá.

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* See Act X. of 1882, s. 3.

Act IX. of 1874.

ACT IX. OF 1874.*

THE EUROPEAN VAGRANCY ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 7TH APRIL 1874.

An Act to consolidate and amend the law relating to European Vagrancy.

Preamble.

WHEREAS it is expedient to consolidate and amend the laws relating to persons of European extraction who wander in a destitute condition throughout India; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title.

1. This Act may be called "The European Vagrancy Act, 1874;"

Local extent.

It extends to the whole of British India and to the dominions of Princes and States in India in alliance with Her Majesty;

Commencement.

And it shall come into force at once: Provided that sections 4 to 16 (both inclusive), 19, 20, 24, and 29, shall not come into force in Coorg, or in the Andaman and Nicobar Islands, or in any of the dominions of the Princes and States in India in alliance with Her Majesty not situate within the limits of any Presidency, Lieutenant-Governorship, or Chief Commissionership in British India, until such day or respective days as the Governor-General in Council from time to time, by notification in the *Gazette of India*, appoints in this behalf.

Repeal of Acts.

2. Acts No. XXI. of 1869 (*to provide against European Vagrancy*) and No. XXVIII. of 1871 (*to amend the European Vagrancy Act, 1869*) are hereby repealed.

But all appointments and orders made, work-houses provided, certificates given, powers conferred, rules prescribed, and exemptions granted under the former Act shall be deemed to have been respectively made, provided, given, conferred, prescribed, and granted under this Act.

Interpretation-clause.

3. In this Act—

"Person of European extraction."

"Person of European extraction" includes—

(*a*) persons born in Europe, America, the West Indies, Australia, Tasmania, New Zealand, Natal, or the Cape Colony;

(*b*) the sons and grandsons of such persons;

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* Act IX. of 1874 has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886.

It is included in the Schedule to the Santál Parganas Laws Regulation, III. of 1886.

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum.—See *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504.

It has been extended, under the same Act, to the Scheduled District of the North-Western Provinces Tarái.—See *Gazette of India*, Sep. 23, 1876, Pt. I., p. 505.

but does not include persons commonly called Eurasians or East Indians:

"Vagrant" means a person of European extraction found asking for alms, or wandering about without any employment or visible means of subsistence:

"Vagrant."

"Master of a ship" includes any person in charge of a decked vessel:

"Master of a ship."

And in Parts III. and V. of this Act "Magistrate" means, within the limits of the towns of Calcutta, Madras, and Bombay, a Presidency Magistrate,* and, outside those limits, a person exercising powers under the Code of Criminal Procedure* not less than those of a Magistrate of the second class.

"Magistrate."

PART II.

PROCEDURE.

Power to require apparent vagrant to go before Magistrate.

4 Any police-officer may, within the limits of the towns of Calcutta, Madras, and Bombay, require any person who is apparently a vagrant to accompany him or any other police-officer to, and to appear before, the nearest Presidency Magistrate,* and may, without those limits, require any such person to accompany him or any other police-officer to, and to appear before, the nearest Justice of the Peace exercising the powers of a Magistrate of the first class under the Code of Criminal Procedure.*

Summary inquiry into vagrant's circumstances.

Declaration of vagrancy.

5. The Presidency Magistrate* or Justice shall in such case, or in any other case where a person apparently a vagrant comes before him, make a summary inquiry into the circumstances and character of the apparent vagrant; and, if he is satisfied that such person is a vagrant, he shall record in his office a declaration to that effect.

Order to go to work-house.

If he is further of opinion that the vagrant is not likely to obtain employment at once, or if he has reason to believe that a declaration of vagrancy has on any former occasion been recorded in respect of such vagrant, he shall require the vagrant to go to a Government work-house, and shall draw up an order to that effect.

The vagrant shall then be placed in charge of the police for the purpose of being forwarded to the work-house, and the said order shall be a sufficient authority to the police for retaining him in their charge while he is on his way to the work-house, and to the Governor of the work-house for receiving and detaining such vagrant.

Forwarding vagrant to place of employment.

6. Where the officer making the inquiry mentioned in section 5 is of opinion that the vagrant is likely to obtain employment in any place subject to the Local Government, or (when the vagrant is in any part of the dominions mentioned in section 1) in any place subject to any adjacent Local Government, such officer may, in his discretion, forward the vagrant to such place in charge of the police, and draw up an order to that effect.

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* See Act X. of 1882, s. 3.

Act IX. of 1874.

Such order shall be a sufficient authority to the police for retaining the vagrant in their charge while he is on his way to such place of employment.

Assistance to obtain employment.

7. Upon his arrival at the place of employment, the vagrant shall be taken before the nearest Presidency Magistrate* or Justice of the Peace exercising powers as aforesaid, to whom the order for transmission shall be delivered.

Such officer shall thereupon, to the best of his ability, assist the vagrant in seeking employment, and may, in the meantime, if he think fit, keep the vagrant in the charge of the police.

Should the vagrant fail to obtain suitable employment within a reasonable time not exceeding fifteen days from such arrival, such officer shall forward him to a Government work-house in the manner provided by section 5.

Subsistence-allowance.

8. Every person while in charge of the police, whether before inquiry as to his vagrancy, or while he is on his way, under section 5, to the work-house, or, under section 6, to a place of employment, shall be entitled to an allowance for his subsistence at the rate of eight annas per diem.

The Presidency Magistrate* or Justice before whom any vagrant is taken under section 7 may, if he think fit, order the vagrant to receive a similar allowance while he is seeking employment.

The Local Government shall cause such allowance to be paid out of such funds at its disposal, and in such manner, as it may, from time to time, direct.

Power to give certificates.

9. Any Presidency Magistrate* or Justice of the Peace exercising powers as aforesaid may, on being satisfied that any person of European extraction is not likely to become a vagrant, give such person a certificate under his hand, stating that for a certain time (mentioning it) not exceeding six months from the date of the certificate, and within certain limits (mentioning them), nothing in sections 4, 5, 6, and 7, shall apply to the holder of such certificate; and thereupon, so long as the certificate remains in force, nothing in sections 4, 5, 6, and 7 shall apply to such person within such limits as aforesaid.

Form of certificate.

Every such certificate shall be in the form set forth in the first schedule to this Act annexed, or as near thereto as circumstances will admit.

Power to invest certain officials with jurisdiction of Justices under sections 5, 7, 8, and 9.

10. The Local Government may, from time to time, by notification in the official Gazette, invest any Justice of the Peace, District Superintendent of Police, or Assistant District Superintendent of Police, with the jurisdiction and powers conferred by this Part on a Justice of the Peace exercising powers as aforesaid.

PART III.

GOVERNMENT WORK-HOUSES.

Provisions of Government work-houses.

11. The Local Government, with the previous sanction of the Governor-General in Council, may provide work-houses with their necessary furniture and establishment, at such places as it may think proper, for the temporary reception of vagrants;

* See Act X. of 1882, s. 3.

or may, by writing under the hand of a Secretary to such Government, certify any building, or part of a building, not provided as a work-house under the former part of this section, to be fit for a work-house for the purposes of this Act. Every such certificate shall be published in the local official Gazette, and thereupon such building or part of a building shall, until the Local Government otherwise orders, be deemed a Government work-house under this Act.

Scale of diet.

The Local Government shall allow the same scale of diet for the support of vagrants received in such work-houses as is for the time being allowed for Europeans confined in the local prisons or penitentiaries.

Superintendence of work-houses.

12. Every such work-house shall be under the immediate charge of a Governor, who shall be appointed, and may be suspended or removed, by the Local Government.

Every such Governor shall, if the Local Government think fit, be subject to the orders of a Committee of Management appointed from time to time by such Government, or, in the absence of a Committee, to the orders of such officer as the Local Government from time to time appoints in this behalf.

Search of vagrants.

13. Every such Governor may order that any vagrant admitted to the work house under his charge shall be searched and that the vagrant's bundles, packages, and other effects shall be inspected, and may direct that any money then found with or on the vagrant, shall be applied (subject to the orders of the Local Government) towards the expenses of carrying this Act into execution, and may order that all or any of the said effects shall be sold, and that the produce of the sale be applied as aforesaid, but subject to the like orders.

Discipline.

14. Vagrants admitted to work-houses under this Act shall be subject to such rules of management and discipline as may, from time to time, be prescribed by the Local Government with the previous sanction of the Governor-General in Council.

The Local Government may authorize any Governor of a work-house to punish (under or not under the supervision and direction of a Committee of Management, as the Local Government thinks fit) any vagrant who knowingly disobeys or neglects any such rule with any one of the following punishments (namely):—

(*a*) solitary confinement within the work-house for any time not exceeding seven days;

(*b*) solitary confinement within the work-house for any time not exceeding three days upon a diet reduced to such extent as the Local Government may prescribe;

(*c*) hard labour for any time not exceeding seven days;

(*d*) reduction of diet to such extent as the Local Government may prescribe for any time not exceeding five days;

or, in lieu of any such punishment, any such vagrant may, on conviction before a Magistrate of such disobedience or neglect, be punishable with rigorous imprisonment in jail for a term which may extend to three months.

Refusal to accept employment.

15. The Governor and the Committee of Management (if any) of every such work-house shall use his and their best endeavours to obtain outside the work-house suitable employment for the vagrants admitted thereto.

Act IX. of 1874.

When such employment is obtained, any such vagrant refusing or neglecting to avail himself thereof shall, on conviction before a Magistrate, be punishable with rigorous imprisonment for a term which may extend to one month.

PART IV.

REMOVAL FROM INDIA.

Removal of vagrants. Cost of removal.

16. If, after the lapse of a reasonable time, no suitable employment is obtainable for any such vagrant, the Local Government may either (when he has entered into such agreement as hereinafter mentioned) cause him to be removed from British India in manner hereinafter provided, the cost of such removal being paid by Government;

or it may cause sections 23 and 30 to be read to him, and may then release him.

Agreements with vagrants.

17. Any vagrant or other person of European extraction may enter into an agreement in writing with the Secretary of State for India in Council binding himself—

(*a*) to proceed to such port in British India as shall be mentioned in the agreement;

(*b*) there to embark on board such ship and at such time as is directed by an officer appointed in this behalf by the Local Government of the territories in which such port is situate, for the purpose of being removed from India at the expense of the said Secretary of State in Council;

(*c*) to remain on board such ship until she has arrived at her port of destination; and

(*d*) not to return to India until five years have elapsed from the date of such embarkation.

Form of agreements.

Every such agreement* shall be in the form set forth in the second schedule to this Act annexed, or as near thereto is circumstances admit.

Power to perform agreement.

18. The Local Government of the territories in which the said port is situate may enter into such contracts for conveyance or otherwise, and perform such other acts as may be necessary to carry out such agreement on the part of the said Secretary of State in Council.

PART V.

PENALTIES.

Refusal to go before Magistrate.

19. Any person refusing or failing to accompany a police-officer to, or to appear before, a Presidency Magistrate† or Justice of the Peace, for the purpose of preliminary inquiry,

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* Certain words, which were repealed by Act I. of 1879, have been omitted. That Act exempts these agreements from stamp-duty.—See Sch. II., No. 2, cl. (*f*).

† See Act X. of 1882, s. 3.

when required so to do under section 4, may be arrested without warrant and shall be punishable, whether he be or be not a European British subject, on conviction before a Magistrate, with imprisonment for a term which may extend to one month, or with fine, or with both.

Assaulting police.

And any person, who, when required under section 4 to accompany a police-officer to, or to appear before, a Presidency Magistrate* or Justice of the Peace, commits an offence punishable under section 353 of the Indian Penal Code, may, whether he be or be not a European British subject, be tried by a Magistrate for such offence.

20. Any vagrant who escapes from the police while committed to their charge under the orders specified in sections 5 and 6,

Escaping from police.

Quitting work-house without leave.

or who leaves a work-house, under this Act, without permission from the Governor,

Failing to return to work-house.

or who, having, with such permission, left a work-house for a limited time or a specified purpose, fails to return on the expiration of such time, or when such purpose has been accomplished or proves to be impracticable,

shall, for every such offence, be punishable, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to two years.

21. Any person entering into an agreement under section 17, and failing to proceed in pursuance thereof to the port therein mentioned,

Failing to proceed to port of embarkation.

Refusing to go on board-ship.

or refusing to embark when directed so to do under the same section,

Escaping from ship.

or escaping from the ship in which he has so embarked before she has reached her port of destination,

shall, for every such offence, be punishable, whether he be or be not a European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to six months.

22. Any person returning to India within five years of the date of his embarkation pursuant to any agreement entered into under section 17, unless specially permitted so to do by the Secretary of State for India, shall, for every such offence, be punishable, whether he be or be not a European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to two years.

Returning to India.

23. Any person of European extraction found asking for alms when he has sufficient means of subsistence,

Begging.

or asking for alms in a threatening or insolent manner,

or continuing to ask for alms of any person after he has been required to desist,

shall be punishable, whether he be or be not a European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term not exceeding one month for the first offence, two months for the second, and three months for any subsequent offence.

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* See Act X. of 1882, s. 3.

Act IX. of 1874.

Procedure on close of imprisonment.

24. Every person imprisoned under section 19, 20, 21, 22, or 23, shall, at the end of his term of imprisonment, be placed before the nearest Presidency Magistrate* or Justice of the Peace exercising powers as aforesaid who shall, if he think fit, forthwith deal with him in the manner prescribed by sections 5 and 6.

The order of transmission shall certify the fact of the previous conviction.

Penalty on ship-master bringing European convicts to India.

25. Every master of a ship landing or allowing to land in any part of British India any person of European extraction who has been convicted in any other part of Her Majesty's dominions of felony, or of an offence which, if committed in England, would be felony, shall, on conviction before a Magistrate, be liable, for every such person so landed or allowed to land, to pay a fine not exceeding five hundred rupees, and not less than one hundred rupees, and, in default of payment, to imprisonment for any term not exceeding two months,

unless the defendant satisfy the Magistrate by evidence (which the defendant is hereby declared competent to give) that he had made due enquiry as to the person so landed, or allowed to land, and that he had no reason to believe that such person had been convicted as aforesaid.

Power to exempt certain ship-masters.

The Governor-General in Council may, from time to time, by notification in the *Gazette of India*, exempt from the operation of the former part of this section the masters of any class of ships, on such terms as to the Governor-General in Council seems fit, and either in respect of all or of any of the persons on board such ships.†

The Governor-General in Council may, in like manner, revoke any exemption made under this section.

Recovery of fines.

26. All fines imposed under this Act may be recovered "in the manner provided by the law for the time being in force for the recovery of fines imposed by Criminal Courts."‡

Payment of fines.

All fines recovered under this Act shall be paid to the credit of the Government of India, or as the Governor-General in Council from time to time directs.

Prosecutions.

27. All prosecutions under this Act may be instituted and conducted by such officer as the Local Government from time to time appoints in this behalf.

Limits of jurisdiction.

28. In imposing penalties under this Part and Part III. of this Act, no person shall exceed the limits of jurisdiction prescribed for him by the Code of Criminal Procedure* in the case of offenders not being European British subjects.

Validity of proceedings where Magistrate is not the nearest.

29. No proceeding under this Act shall be deemed invalid by reason only that the Presidency Magistrate* or Justice before whom a person, apparently a vagrant, was required to appear, or before whom a person was placed under section 24, was not the nearest.

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* See Act X. of 1882, s. 3.

† *Gazette of India*, 22nd October 1870, p. 723.

‡ The words quoted have been substituted for certain words which have been repealed.—See Act XII. of 1891.

PART VI.

MISCELLANEOUS.

Deprivation of privileges of European British subject under Criminal Procedure Code.

30. Any European British subject who, upon the summary enquiry mentioned in section 5, has been determined to be a vagrant, or who has been convicted under section 22 or section 23, shall, so long as he remains in India, be subject, beyond the limits of the said towns, to the provisions of the Code of Criminal Procedure* (other than those contained in Chapter VIII.* of the same Code) applicable to a European not being a British subject.

If from any cause he is committed or held to bail by a Justice of the Peace to take his trial before a High Court, he shall not be at liberty to object to the jurisdiction of such Justice of the Peace or High Court on the ground of anything contained in the former part of this section :

Save as aforesaid, nothing herein contained shall be deemed to confer jurisdiction over European British subjects on Magistrates, who, if this Act had not been passed, would have had no such jurisdiction.

Liability of importers of Europeans or employers of soldiers becoming vagrants.

31. Whenever any person of European extraction lands in India, or, being a non-commissioned officer or soldier in Her Majesty's Army, leaves that Army in India, under an engagement to serve any other person, or any Company, Association, or body of persons in any capacity,

and whenever a sailor of European extraction, not being a British subject, is discharged from his ship in any British Indian port,

and becomes chargeable to the State as a vagrant within one year after his arrival in India or leaving the Army, or discharge from his ship, as the case may be, then the person or Company, Association, or body, to serve whom he has so landed in India or left the Army, or, in the case of a sailor, the person who is, at the date of the discharge, the owner or agent of the ship from which the sailor has been so discharged, shall be liable to pay to the Government the cost of his removal under this Act, and all other charges incurred by the State in consequence of his becoming a vagrant.

Recovery of charges.

Such costs and charges shall be recoverable by suit as if an express agreement to repay them had been entered into, with the Secretary of State for India in Council, by the person, Company, Association, body, owner, or agent chargeable.

Liability of consignee in case of Europeans who arrive in charge of animals, and become vagrants.

32. When any person of European extraction lands in India, being or having been, during his passage to India, or from one Indian port to another, in charge of, or in attendance upon, any animal, and becomes chargeable to the State as a vagrant, within one year after his arrival in India, then

the consignee of such animal,

or the agents in India for the sale of such animal,

or, if such consignee or agents cannot be found, the agent to whom the ship in which such animal arrived in India was consigned,

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* See Act X. of 1882, s. 3.

Act IX. of 1874.

shall be liable to pay to the Government the cost of such person's removal under this Act, and all other charges incurred by the State in consequence of his becoming a vagrant.

Any such consignee or agent shall be entitled to charge the consignor or principal for any payment to the Government under this section.

For the purposes of this section 'consignee' includes any person who undertakes to dispose of such animal for the benefit of the consignor, and

'Consignee' defined.

'Agent' includes any person who undertakes the agency of such ship, though it may not have been consigned to him.

'Agent' defined.

33. In any proceeding under this Part, a certified copy of the declaration recorded under section 5 shall be *primâ-facie* evidence that the European British subject named therein has been, upon the summary enquiry mentioned in that section, determined to be, and that he was at the date of the declaration, a vagrant.

Evidence of declaration under section 5.

34. The powers and duties conferred and imposed by sections 16 and 18 on a Local Government may be exercised and performed by such class of officers as the Local Government, from time to time, by notification in the official Gazette, appoints in this behalf.*

Exercise of powers conferred on Local Government.

35. The powers and duties conferred and imposed by this Act on Magistrates, Justices of the Peace exercising the powers of a Magistrate of the first class, and police-officers, respectively, may, in places beyond the limits of British India, be exercised and performed by such persons respectively as the Governor-General in Council, from time to time, by notification in the *Gazette of India*, appoints in this behalf.

Exercise in Native States of powers conferred on Magistrates, Justices, and Police.

36. The Governor-General in Council may, from time to time, make rules consistent with this Act for the guidance of officers in matters connected with its enforcement.

Power to make rules for guidance of officers.

All such rules shall be published in the *Gazette of India*, and shall thereupon have the force of law.

THE FIRST SCHEDULE.

(*See section 9.*)

WHEREAS *E F*, of , a person of European extraction, and holder of this certificate, has appeared before me, and satisfied me that he is not likely to become a vagrant within the meaning of the European Vagrancy Act, 1874, THESE ARE TO CERTIFY that for the space of months from the date hereof, and within the Province [*or* District] of , nothing in sections 4, 5, 6, and 7 of the same Act shall be deemed to apply to him, unless he is found asking for alms, IN WHICH CASE this certificate shall be void.

(Signed) G. H.,

Dated this day of 18 .

Presidency Magistrate† *for the Town of*
or *Justice of the Peace for exercising the powers of a Magistrate of the class.*

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* See *N.-W. Provinces Gazette*, 10th July 1875, p. 927.

† See Act X. of 1882, s. 3.

THE SECOND SCHEDULE.

(See section 17.)

ARTICLES OF AGREEMENT made this day of 18 , BETWEEN the Secretary of State for India in Council of the one part, and *C D*, of, &c. [*the vagrant*], of the other part: Each of the parties hereto (so far as relates to the acts on his own part to be performed) hereby agrees with the other of them as follows:—

1. The said *C D* shall proceed forthwith to the port of [*the port of embarkation*].

2. The said *C D* shall there embark on board such ship and at such time as an officer appointed in this behalf by the Local Government shall direct.

3. The said *C D* shall remain on board such ship until she shall have arrived at her port of destination.

4. The said *C D* shall not return to India until five years shall have elapsed, from the date of such embarkation, unless specially permitted so to return by the said Secretary of State.

5. The said Secretary of State in Council shall defray the cost of the transit of the said *C D* to the said port; and of his lodging and subsistence during such transit and during his detention (if any) at the same port, and shall contract, with the owner of the said ship or his agent, for the passage of the said *C D* on board the said ship, and for his subsistence during the voyage for which he shall embark as aforesaid.

In witness whereof *A B* (by order of the Governor-General of India in Council [*or* the Governor of in Council, *or* the Lieutenant-Governor of *or* the Chief Commissioner of], on behalf of the said Secretary of State in Council), and the said *C D* have hereunto set their hands the day and year first above written.

ACT XII. OF 1874.

RECEIVED THE G.-G.'S ASSENT ON THE 2ND SEPTEMBER 1874.

An Act to provide for the exercise, in Sylhet, of the Powers of the Lieutenant-Governor and Board of Revenue of Bengal.

Preamble.

WHEREAS the District of Sylhet is about to be transferred from the Lieutenant-Governorship of Bengal to the Chief Commissionership of Assam, and it is therefore necessary to provide for the exercise, within the said District, of the powers now vested in, or exerciseable by, the Lieutenant-Governor of Bengal and the Board of Revenue for the Lower Provinces of the Presidency of Fort William in Bengal, respectively; It is hereby enacted as follows:—

Powers of Lieutenant-Governor and Board in Sylhet transferred to Governor-General in Council.

1. All powers over the whole or any portion of the said District, which, at the time of the said transfer, are, under, or by virtue of, any law or regulation, vested in, or exerciseable by, the said Lieutenant-Governor or Board of Revenue, shall, on the said transfer, become vested in the Governor-General in Council.

Delegation of such powers.

2. The Governor-General in Council may, from time to time, delegate to the Chief Commissioner of Assam all or any of the said powers, and withdraw any powers so delegated.

Act XIV. of 1874.

ACT XIV. OF 1874.*

RECEIVED THE G.-G.'S ASSENT ON THE 8TH DECEMBER 1874.

An Act to ascertain the Enactments in force in various parts of British India, and for other purposes.

Preamble.

WHEREAS various parts of British India have never been brought within, or have from time to time been removed from, the operation of the general Acts and Regulations and the jurisdiction of the ordinary Courts of Judicature;

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* Act XIV. of 1874 has been declared in force in Upper Burma generally.—See the First Part of the Second Schedule to Act XX. of 1886.

The Act has been declared, under s. 3, to be in force in the following Scheduled Districts:—

The Taluqs of Bhadrachalam and Rakapilli and the Rampa Country	See *Gazette of India*	June 28, 1879, Pt. I., p. 437.
Sindh	Ditto	Oct. 6, 1877, Pt. I., p. 578.
Aden	Ditto	June 28, 1879, Pt. I., p. 434.
The villages belonging to the following Mehwassi Chiefs:— (1) the Parví of Kathi, (2) „ „ of Nal, (3) „ „ of Singpur, (4) „ Wahví of Gaohállí, (5) „ Wassawa of Chiklí, (6) „ Parví of Nawalpúr	Ditto	Feb. 15, 1879, Pt. I., p. 106.
The Island of Perim	Ditto	Feb. 20, 1886, Pt. I., p. 86.
The Territory of Peint	Ditto	Mar. 12, 1887, Pt. I., p. 144.
The Western Dvárs	Ditto	Sep. 25, 1875, Pt. I., p. 497.
The Districts of Jalpáiguri and Dárjiling, except the Western Dvàrs	Ditto	Extraordinary, Nov. 14, 1877.
The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum in the District of Singbhum	Ditto	Extraordinary, Nov. 14, 1877.
The Kolhán in the District of Singbhum	Ditto	Oct. 22, 1881, Pt. I., p. 504.
The Mahál of Angul	Ditto	Extraordinary, Nov. 14, 1877.
The Jhánsí Division	Ditto	Nov. 17, 1877, Pt. I., p. 678.
The Kumáon and Garhwál Districts[1]	Ditto	Nov. 4, 1876, Pt. I., p. 678.
The North-Western Provinces Tarái[1]	Ditto	Sep. 23, 1876, Pt. I., p. 505
The scheduled portion of the Mirzápur District	Ditto	May 31, 1879, Pt. I., p. 383.
Jaunsar Bawár	Ditto	May 31, 1879, Pt. I., p. 381.
The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán, Dera Gházi Khán, Lahaul, and Spití	Ditto	Sep. 22, 1877, Pt. I., p. 562.

[1] The Scheduled Districts Act itself has not been expressly declared in force in Kumáon, Garhwál, or the North-Western Provinces Tarái, but it has been brought into force in these places by the issue of notifications, under s. 3, declaring other enactments in force.

And whereas doubts have arisen in some cases as to which Acts or Regulations are in force in such parts, and in other cases as to what are the boundaries of such parts; And whereas among such parts are the territories specified in the first schedule hereto annexed, and it is expedient to provide readier means than now exist for ascertaining the enactments in force in such territories and the boundaries thereof, and for administering the law therein; Act XIV. of 1874.

And whereas it is expedient to declare that certain Acts are in force in a tract of land lying between the Railway Station at Satná and the eastern boundary of the Jabalpur Division;—

It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Scheduled Districts Act, 1874:"

Local extent.

This Act extends in the first instance to the whole of British India other than the territories mentioned in the first schedule hereto annexed, and it shall come into force in each of the Scheduled Districts on the issue of a notification under section 3 relating to such District.

Interpretation-clause.

In this Act the term "Scheduled Districts" means the territories mentioned in the first schedule hereto annexed; and, from the date fixed in the resolution next hereinafter mentioned, it shall also include any other territory to which the Secretary of State for India, by resolution in Council, may declare the provisions of the thirty-third of Victoria, chapter 3, section 1, to be applicable.*

The Scheduled Districts of the Central Provinces . . .	See *Gazette of India*.	April 20, 1878, Pt I., p. 266.
Coorg	Ditto	Feb. 27, 1875, Pt I., p. 95
The Andaman and Nicobar Islands	Ditto	Mar. 16, 1878, Pt. I., p. 132.
Ajmere and Merwára . . .	Ditto	Oct. 20, 1877, Pt. I., p 605.
Assam	Ditto	Nov. 10, 1877, Pt. I., p. 662.
The Pargana of Mánpur . .	Ditto	Mar. 19, 1887, Pt. I., p. 157.
Upper Burma, except the Shan States[1].	Ditto	Nov. 6, 1886, Pt. I., p. 664.

* 33 Vic., c. 3, s. 1, has been declared applicable to the following places, from the dates specified against each:—

Madras.—In the Godávari District—(1) the unsettled Government villages in the Yernagúdem taluq; (2) the villages of the ex-Mansab of Jaddengi; and (3) the following petty proprietary estates, namely, Bayanagúdem, Billamillí, Jangamreddigúdem, Gutála, Gangolu, Patteshim, Polávaram, Petta, Dangengi, Virávaram, and Davipatnam; from May 8, 1883.—See *Gazette of India*, June 30, 1883, Pt. I., p. 265.

Bombay.—The Districts of Kohistán, Johí, Nasírábád, Sujawal, Sihwan, Kakkar, Kambar, Jacobábád, Thul, and Kasmur (bordering on the frontier of Sindh, from Mithee on the Indus to the sea west of Karáchi), from Jan. 1, 1873.—See *Bombay Government Gazette*, Nov. 28, 1872, Pt. I., p. 1225:

The Peint territory, from July 14, 1885.—See *Gazette of India*, Aug. 29, 1885, Pt. I., p. 518:

The Island of Perim, from Sep. 10, 1884.—See *Gazette of India*, May 21, 1887, Pt. I., p. 239:

Aden, from Sep. 30, 1885.—See *Gazette of India*, Dec. 19, 1885, Pt. I., p. 675.

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[1] When any portion of Upper Burma is transferred to Lower Burma, the Scheduled Districts Act shall, unless the Governor-General otherwise directs, continue to be in force there.—See Act XX. of 1886, s. 2 (3).

Act XIV. of 1874.

Repeal of enactments.

2. The enactments mentioned in the second schedule hereto annexed shall be repealed.

Notification of enactments in force in Scheduled Districts.

3. The Local Government, with the previous sanction of the Governor-General in Council, may from time to time, by notification in the *Gazette of India*, and also in the local Gazette (if any),—

(*a*) declare what enactments are actually in force in any of the Scheduled Districts, or in any part of any such District;

(*b*) declare of any enactment that it is not actually in force in any of the said Districts or in any part of any such District;

(*c*) correct any mistake of fact in any notification issued under this section:

Provided that a declaration once made under clause (*a*) or clause (*b*) of this section shall not be altered by any subsequent declaration other than a declaration under clause (*c*) of this section.

Effect of notification under section 3.

4. On the issue, under section 3, of a notification declaring what enactments are in force, or not in force, in any Scheduled District, the enactments so notified shall be

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Bengal.—The Santál Parganas, from March 15, 1872.—See *Gazette of India*, Mar. 16, 1872, Pt. I., p. 240:
The Chittagong Hills, from Jan 1, 1873.—See *Gazette of India*, Dec. 14, 1872, Pt. I., p. 1157.

North-Western Provinces.—The Parganas of Kashípur and Jaspur in the Tarái District, from July 1, 1873.—See *Gazette of India*, June 14, 1873, Pt. I., p. 540:
Tappa Chaurasi, in the Mirzápur District, from Feb. 1, 1874.—See *Gazette of India*, Mar. 7, 1874, Pt. I., p. 133:
The Parganas of Bazpur, Rudarpur, Gadarpur, Kilpurí, Nanak-Mattha, and Bilheri, in the Tarái District, from April 1, 1874.—See *Gazette of India*, Mar. 21, 1874, Pt. I., p. 149.

Panjáb.—The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán, and the Pargana of Spití, from Oct. 6, 1870.—See *Gazette of India*, Dec. 3, 1870, Pt. I., p. 799.

Coorg, from Oct. 1, 1877.—See *Gazette of India*, Sep. 22, 1877, Pt. I., p. 562.

Andaman and Nicobar Islands.—The territories under the Government of the Chief Commissioner of the Andaman and Nicobar Islands, that is to say, (*1*) the group of Islands known as the Great and Little Andamans and the Little Cocos, with their dependencies; and (*2*) the Island of Nancowry, together with all others commonly known as the Nicobar Islands, that is to say, the Islands of Car Nicobar and Great Nicobar, with those lying between them, including Tillan-chong, from July 15, 1872.—See *Gazette of India*, Aug. 3, 1872, Pt. I., p. 730.

Ajmere and Merwára, from March 16, 1871.—See *Gazette of India*, May 27, 1871, Pt. I., p. 398.

Assam.—The Districts of Kamrúp, Darrang, Naugong, Sibságar, Lakhimpur, Gáro Hills, Khásia and Jaintia Hills, Nágá Hills, and Káchár, from Jan. 1, 1873.—See *Gazette of India*, Dec. 14, 1872, Pt. I., p. 1157:
The District of Silhat, from Aug. 1, 1874.—See *Gazette of India*, July 25, 1874, Pt. I., p. 395.

Burma.—The Hill Districts of Arakan, from Oct. 5, 1871.—See *Gazette of India*, Dec. 23, 1871, Pt. I., p. 985.
Upper Burma (with the exception of the Shan States), from March 1, 1886.—See *Gazette of India*, May 8, 1886, Pt. I., p. 311.

deemed to be in force or not in force, according to the tenor of the notification, in such District, and every such notification shall be binding on all Courts of law. Act XIV. of 1874.

Power to extend enactments to Scheduled Districts.

5. The Local Government, with the previous sanction of the Governor-General in Council, may, from time to time, by notification in the *Gazette of India*, and also in the local Gazette (if any), extend to any of the Scheduled Districts, or to any part of any such District, any enactment which is in force in any part of British India at the date of such extension.

Modification of enactments in their application to Scheduled Districts.

5A * In declaring an enactment in force in a Scheduled District or part thereof under section 3 of this Act, or in extending an enactment to a Scheduled District or part thereof under section 5 of this Act, the Local Government, with the previous sanction of the Governor-General in Council, may declare the operation of the enactment to be subject to such restrictions and modifications as that Government thinks fit.

Appointment of officers and regulation of their procedure.

6. The Local Government may from time to time—

(*a*) appoint officers to administer civil and criminal justice, and to superintend the settlement and collection of the public revenue and all matters relating to rent, and otherwise to conduct the administration within the Scheduled Districts,

(*b*) regulate the procedure of the officers so appointed; but not so as to restrict the operation of any enactment for the time being in force in any of the said Districts,

(*c*) direct by what authority any jurisdiction, powers, or duties incident to the operation of any enactment for the time being in force in such District shall be exercised or performed.

Continuance of existing rules and officers.

7. All rules heretofore prescribed by the Governor-General in Council or the Local Government for the guidance of officer appointed within any of the Scheduled Districts for all or any of the purposes mentioned in section 6 and in force at the time of the passing of this Act, shall continue to be in force unless and until the Governor-General in Council or the Local Government, as the case may be, otherwise directs.

All existing officers so appointed previous to the date on which this Act comes into force in such District shall be deemed to have been appointed hereunder.

Settlement of questions as to boundary.

8. Whenever any question arises as to the line of boundary between any of the Scheduled Districts and other territory, such officer as the Local Government or (where the said District and the other territory are not subject to the same Local Government) as the Governor-General in Council from time to time appoints may consider and determine such line of boundary;

and the order made thereon by such officer, if confirmed by the Government which appointed him, shall be conclusive in all Courts of Justice.

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* S. 5A has been inserted by Act XII. of 1891, Sch. II.

Act XIV. of 1874.

Place of imprisonment or transportation.

9. Any person liable to be imprisoned or to be transported beyond sea, under any order or sentence passed by any officer appointed under section 6, may (subject to such rules as the Governor-General in Council may, from time to time, prescribe in this behalf) be imprisoned in such jail, or transported to such place, as the Local Government directs.

Extension to Satná strip of Acts relating to public gambling, pandhari-tax, and salt.

10. Acts No. III. of 1867 *and* No. XIV. of 1867* are hereby declared to be in force in the tract of land ceded to the British Government in the year 1863, and lying between the Railway Station at Satná and the eastern boundary of the Jabalpur District.

Saving of criminal jurisdiction over European British subjects.

11. Nothing contained in this Act or in any notification issued under the powers hereby conferred shall be deemed—

(*a*) to affect the criminal jurisdiction of any Court over European British subjects, or

(*b*) to affect any law other than laws contained in Acts or Regulations, or in rules made in exercise of powers conferred by such Acts or Regulations.

THE FIRST SCHEDULE.

(*See section 1.*)

PART I.

SCHEDULED DISTRICTS, MADRAS.

I.—*In Ganjam.*

(1.) The Gumsur Maliahs, including Chokapad.
(2.) The Surada Maliahs.
(3.) The Chinna Kimedi Maliahs.
(4.) The Pedda Kimedi Maliahs.
(5.) The Bodaguda Maliahs.
(6.) The Surangi Maliahs.
(7.) The Parla Kimedi Maliahs.
(8.) The Muttás of Koradá and Ronaba (otherwise called Srikarnia).
(9.) [*Repealed by Act XII. of 1891.*]
(10.) The Jurada Maliah.
(11.) The Jalantra Maliah.
(12.) The Mandasa Maliah.
(13.) The Budarasinghi Maliah.
(14.) The Kuttingia Maliah.

II.—*In Vizagapatam.*

(1.) The Joypur Zamindárí.
(2.) Golconda Hills, west of the River Boderu.
(3.) The Madugol Maliahs.
(4.) The Kasipur Zamindárí.

* In s. 10, the words, "and No. XXV. of 1869," repealed by Act XII. of 1891, Sch. I., have here been omitted. The Legislature forgot to insert the word "and" after the words and figures, "Acts No. III. of 1867."

(5.) The Panchipenta Maliahs.
(6.) Mondemkolla, in the Merangi Zamindári.
(7.) The Konda Muttá of Merangi.*
(8.) The Gumma and Konda Muttás of Kurpam.
(9.) The Kottam, Rám and Konda Muttás of Palkonda.

III.—*In the Godavari District.*†

(1.) The Bhadráchalam Táluq.
(2.) Rákapilli Táluq.
(3.) The Rampá Country.

IV.—*In the Indian Ocean.*

The Laccadive Islands, including Minicoy.

PART II.

SCHEDULED DISTRICTS, BOMBAY.‡

I.—The Province of Sindh.
II.—§
III.—Aden.
IV.—The Villages belonging to the following Mehwassi Chiefs :—
(1.) The Párvi of Káthi.
(2.) The Párvi of Nál.
(3.) The Párvi of Singpur.
(4.) Walwi of Gaohálli.
(5.) The Wassáwa of Chikhli.
(6.) The Párvi of Nawalpur.

PART III.

SCHEDULED DISTRICTS, BENGAL.

I.—The Jalpáigori and Darjeeling Districts.‖
II.—The Hill Tracts of Chittagong.
III.—The Santhál Parganas.
IV.—The Chutiá Nágpur Division.¶
V.—The Mahál of Angul.**

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* The word "Merangi" has been substituted for the word "Balgám" by Act XII. of 1891, Sch. I.

† The Ducharti and Guditeru Muttás in the Golconda Hills have been transferred from the Vizagapatam to the Godavari District.—See *Fort St. George Gazette*, July 5, 1881, Pt. I., p. 336. For additional Scheduled Districts in the Godavari District, see foot-note on p. 1221, *supra*.

‡ For additional Scheduled Districts in Bombay, see foot-note on p. 1221, *supra*.

§ The words, "The Panch Maháls," which were originally included in the schedule, have been omitted, as they were repealed by Act VII. of 1885, s. 4.

‖ The word "Districts" has been substituted for the word "Divisions" by Act XII. of 1891, Sch. II.

¶ The Thanas of Raipur and Khattra ceased to form part of the Scheduled District of Chutiá Nágpur on their transfer from the Mánbhum to the Bankura District on Oct. 1, 1879.

** See Act XXV. of 1881, s. 4, which removes the Mahál of Banki from the list of Scheduled Districts. Previous to April 1, 1882, the Mahál of Banki was united with the Mahál of Angul in one Scheduled District.

Act XIV. of 1874.

PART IV.

SCHEDULED DISTRICTS, NORTH-WESTERN PROVINCES.

I.—*

II.—The Province of Kumáon and Garhwal.

III.—The Terái Parganas, comprising Bázpur, Káshipur, Jaspur, Rudarpur, Gadarpur, Kilpuri, Nának-Matthá, and Bilheri.

IV.—In the Mirzápur District—

(1.) The tappás of Agori Khás and South Kon in the Pargana of Agori.

(2.) The tappá of British Singrauli in the Pargana of Singrauli.

(3.) The tappás of Phulwá, Dudhi, and Barhá in the Pargana of Bichipár.

(4.) The portion lying to the South of the Kaimor Range.

V.—†

VI.—The tract of country known as Jaunsar Báwar in the Dehra Dún District.

PART V.

SCHEDULED DISTRICTS, PANJAB.

The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán, Dera Gházi Khán, Lahaul, and Spiti.

PART VI.

SCHEDULED DISTRICTS, CENTRAL PROVINCES.

Chhattisgarh Zamindáris, viz.:—

1. Khariár.
2. Bindrá Nawágarh.
3. Sahezpur.
4. Gándai.
5. Silheti.
6. Barbaspur.
7. Thákurtolá.
8. Lohárá.
9. Gondardehi.
10. Fingeswar.
11. Pándariá.
12. Pendrá.
13. Mátin.
14. Uprorá.
15. Kendá.
16. Láphá.
17. Chhuri.
18. Korbá.
19. Chapá.
20. Borá Sámbhar.
21. Phuljhar.
22. Kolábirá.
23. Rámpur.

Chándá Zamindáris.

1. Ahiri.
2. Ambágarh Chauki.
3. Aundhi.
4. Dhanorá.
5. Dudhmálá.
6. Gewardá.
7. Jhárápáprá.
8. Khutgáon.
9. Koráchá.
10. Kotgal.
11. Muramgáon.
12. Pánábáras.
13. Palasgarh.
14. Rángi.
15. Sirsundi.
16. Sonsari.
17. Chándálá.
18. Gilgáon.
19. Páwi Mutándá.
20. Pategáon.

* The words, "The Jhansi Division, comprising the Districts of Jhansi, Jalaun, and Lalatpur," repealed by Act XX. of 1890, have been omitted.

† The words, "The Family Domains of the Mahárájá of Benares, comprising the following Parganas—Bhadohi and Kheyra Mángror in the Mirzapur District; Kaswá Rájá in the Benares District," which were repealed by Act XIV. of 1881, s. 14, have been omitted.

Chhindwárá Jágirdáris.

1. Harai.
2. Chháter.
3. Gorakhghát.
4. Gorpáni.
5. Baktágarh.
6. Bardágarh.
7. Pachmarhi.
8. Partábgarh.
9. Almod.
10. Sonpur.
11. Bariám Pagárá.

PART VII.

The Chief Commissionership of Coorg.

PART VIII.

The Chief Commissionership of the Andaman and Nicobar Islands.*

PART IX.

The Chief Commissionership of Ajmer and Merwára.

PART X.

The Chief Commissionership of Assam.

PART XI.†

The Hill Tracts of Arakan.

PART XII.

The Pargana of Mánpur.

PART XIII.

[*Repealed* ‡ *by Act XII. of 1891, Sch. I.*]

* The Little Cocos Island ceased to be part of this Scheduled District on Nov. 29 1882.—See Act VIII. of 1883, s. 4.

† Upper Burma (with the exception of the Shán States) is now a Scheduled District. —See foot-note on p. 1222, *supra*.

‡ The words repealed were: "The Cantonment of Morar," which was ceded to the Gwalior State on March 10, 1886.—See *Gazette of India*, July 31, 1886, Pt. I., p. 453.

Act XV of 1874.

(*b*) extend any Act empowering the Local Government to extend the same or any part thereof, or affect in any manner the exercise of such power;

(*c*) affect the operation of any Act or Regulation heretofore extended to, or declared to be in force in, any of the Scheduled Districts;

(*d*) revive any enactment which has been repealed either generally or with reference to some special subject;

(*e*) [*Repealed by Act VIII. of 1887, s. 2.*]

(*f*) [*Repealed by Act XII. of 1891, Sch. I.*]

(*g*) extend Act No. IX. of 1861 to any part of the territories subject to the government of the Governor of Bombay in Council;

(*h*) [*Repealed by Act VIII. of 1887, s. 2.*]

(*i*) extend to the villages mentioned in the schedule to Act No. IV. of 1868 any law not now in force therein;

(*j*) extend to any of the Towns of Calcutta, Madras, and Bombay any law not now in force therein;

(*jj*)* extend to Pargana Bhadohi or Pargana Kheyra Mángror in the Mirzápur District, or to Pargana Kaswá Rájá in the Benares District, any law not now in force therein;

(*k*) affect the operation of any enactment not mentioned in any of the schedules hereto annexed.

9. [*Repealed by Act XII. of 1876.*]

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* Cl. *jj*. has been inserted by Act XIV. of 1881, s. 15.

FIRST SCHEDULE.*

(*See section 3.*)

ACTS OF THE SUPREME COUNCIL.

YEAR AND NUMBER.		SUBJECT.
1836,	*XXVI.*†	*Governor-General's Camp Police.*
1837,	IV.	Power to acquire land.
1838,	XXV.	Wills executed before the 1st January 1866.
1839,	XXIX.	Dower, when marriage was contracted before 1st January 1866.
,,	XXX.	Inheritance where descent took place before 1st January 1866.
,,	XXXII.	Interest.
1840,	*VI.*	*Bills of exchange.*
1841,	X.	Registration of ships.
,,	*XI.*	*Military Courts of Requests.*
,,	*XVIII.*	*Exportation of Military Stores.*
,,	XIX.	Curators in cases of successions.
1842,	*IX.*	*Lease and Release.*
,,	*XII.*	*Military Bazars.*
1843,	V.	Slavery.
1847,	XX.	Copyright.
1850,	V.	Coasting Trade.
,,	XI.	Navigation Laws.
,,	XII.	Default of Public Accountants.
,,	XVIII.	Protection of Judicial Officers.
,,	XIX.	Binding of Apprentices.
,,	XXI.	Non-forfeiture of rights by loss of Caste.
,,	XXXIV.	State Prisoners.
,,	XXXVII.	Inquiries into the behaviour of public servants.
1852,	XXX.	Naturalization of Aliens.
,,	*XXXIII.*	*Enforcement of Judgments of Charter Courts and Military Courts of Requests.*
1853,	II.	Burdens on land.
1854,	*XVIII.*‡	*Railways.*
,,	XXXI.	Barring entails: Conveyances by married women.
1855,	XI.	Mesne-profits and improvements.
,,	XII.	Executors and Administrators.
,,	XIII.	Compensation for loss occasioned by death caused by actionable wrong.
,,	XXIII.	Administration of mortgaged estates in cases of descents occurring or devises made before the 1st January 1866.

* So much of Sch. I. as relates to Acts XI. of 1841, XII. of 1842, XXXIII. of 1852, and III. of 1859, has been repealed by Act VIII. of 1887, s. 2; so much as relates to Act VI. of 1840, by Act XXVI. of 1881, s. 2; so much as relates to Act XVIII. of 1841, by Act XI. of 1878; so much as relates to Act XXVII. of 1860, by Act VII. of 1889, s. 2 and Sch. I.; so much as relates to Acts XI. of 1865 and X. of 1867, by Act IX. of 1887; so much as relates to Acts IX. of 1842, XVIII. of 1854, VIII. of 1859, XIV. of 1859, XV. of 1859, XXIII. of 1861, VI. of 1863, X. of 1866, and X. of 1868, by Act XII. of 1891, Sch. I.

† So much of Act XXVI. of 1836 as has not been repealed has been repealed by Act XII. of 1891, Sch. I.

‡ Act XVIII. of 1854 has been repealed by Act IV. of 1879, which again has been repealed by Act IX. of 1890.

Act XV. of 1874.

FIRST SCHEDULE—*continued.*

(*See section 3.*)

ACTS OF THE SUPREME COUNCIL—*continued.*

YEAR AND NUMBER.	SUBJECT.
1855, XXIV.	Penal servitude.
,, XXVIII.	Interest.
1856, IX.	Bills of Lading.
,, XI.	Desertion by European Soldiers.
,, XV.	Marriage of Hindu Widows.
1857, XI.	Offences against the State.
,, XXV.	Forfeiture by Mutineers.
1858, III.	State Prisoners.
,, XXXV.	Estates of Lunatics not subject to jurisdiction of Supreme Courts.
,, XXXVI.	Lunatic Asylums.
1859, I.	Merchant Seamen.
,, *III.*	*Cantonment Joint Magistrates.*
,, *VIII.**	*Civil Procedure.*
,, IX.	Sections 16, 17, 18, and 20—Forfeitures.
,, *XIV. (sec. 15)*† ...	*Suits to recover possession of land.*
,, *XV.*	*Patents.*
1860, XXI.	Registration of Societies.
,, *XXVII.*	*Collection of debts on Successions.*
1861, *IX.*‡	*Minors.*
,, *XXIII.**	*Amending Civil Procedure Code.*
1862, III.	Government Seal.
1863, *VI.*§	*Sea Customs.*
,, XVI.	Excise Duty payable on Spirits used in Arts and Manufactures.
,, XXIII.	Claims to waste-lands.
,, XXXI.	Gazette of India.
1864, III.	Foreigners.
,, VI.	Whipping.
1865, III.	Common Carriers.
,, *XI.*	*Mofussil Courts of Small Causes.*
,, XV.	Marriage and Divorce among Parsees.
,, XXI.	Intestate succession among Parsees.
1866, V.‖	Bills of Exchange, Commercial Law.
,, *X.*¶	*Companies.*
,, XXI.	Dissolution of Marriages of Native Converts.

* Acts VIII. of 1859 and XXIII. of 1861 have been repealed by Act X. of 1877. These references are to be read as applying to Act XIV. of 1882.—See s. 3, cl. 2, of that Act.

† S. 15 of Act XIV. of 1859 has been repealed in the whole of British India, except the Scheduled Districts, by Act I. of 1877.

‡ Act IX. of 1861 has been repealed by Act VIII. of 1890. This reference is to be read as if made to that Act.—See Act VIII. of 1890, s. 2.

§ Act VI. of 1863 has been repealed by Act VIII. of 1878. This reference is to be read as if made to that Act.—See Act VIII. of 1878, s. 2.

‖ The preamble part of s. 1 and s. 15 are the only parts of Act V. of 1866 which are now in force, the rest having been repealed by Acts IX. of 1872, X. of 1877 (as amended by Act XII. of 1879, s. 99), and XXVI. of 1881.

¶ Act X. of 1866 has been repealed by Act VI. of 1882. This reference is to be read as if made to that Act.—See Act VI. of 1882, s. 2.

FIRST SCHEDULE—*concluded.*

(*See section 3.*)

ACTS OF THE SUPREME COUNCIL—*concluded.*

YEAR AND NUMBER.	SUBJECT.
1866, XXVIII.	Trustees and Mortgagees' Powers.
1867, *X.*	*References by Courts of Small Causes in the Mofussil.*
,, XXV.	Printing Presses, &c.
1868, *X.**	*Amending Consolidated Customs Act.*
1869, XV.	Evidence of Prisoners.
1870, I.	Quarantine.

SECOND SCHEDULE.†

(*See section 4.*)

(*a.*)—MADRAS REGULATIONS.

YEAR AND NUMBER.	SUBJECT.
1802, III.‡ (ss. 1, 11, part of s. 16 only).	Procedure of Civil Courts.
,, (V., s. 30) ...	Sadr Adálat to act according to justice, &c.
,, XIII.	Records of Courts.
,, XIX. (s. 2) ...	Covenanted Civil Servants forbidden to lend.
,, XXV.	Settlement of Land-revenue.
,, XXVI. (ss. 1, 2, & 3 only).	Registration of málguzari land.
,, XXIX.	Karnams.
1803, I.	Board of Revenue.
,, II.	Conduct of Collectors, &c.
1804, V.	Court of Wards.
1805, *I.*	*Salt-revenue.*
1806, *II.* (section 7, clause second).§	*Collectors and Karnams.*

* Act X. of 1868 has been repealed by Act VIII. of 1878. This reference is to be read as if made to that Act.—See also Act VIII. of 1878, s. 2.

† So much of Sch. II. (*a*) as relates to Mad. Régs. I. of 1819, III. of 1831, and VII. of 1832, and to s. 4 of Mad. Reg. IV. of 1821, has been repealed by Act XII. of 1876; so much as relates to Mad. Reg. XI. of 1832, by Act VI. of 1878; so much as relates to Mad. Reg. XIV. of 1832, by Act XIII. of 1889, s. 2 and sch; and so much as relates to Mad. Regs. III. of 1802, s. 11, I. of 1805, II. of 1807, IV. of 1816, IX. of 1816, and XIV. of 1816, by Act XII. of 1891, Sch. I.

‡ S. 11 and part of s. 16 of Mad. Reg. III. of 1802 have been repealed by Act XII. of 1876.

§ This parenthetical clause of Mad. Reg. II. of 1806 has been substituted for "(parts of ss. 1 and 7)" by Act XII. of 1891, Sch. II. The whole of Reg. II. of 1806, except the second clause of s. 7, has been repealed by Act XII. of 1876.

Act XV. of 1874.

SECOND SCHEDULE—*continued.*

(*See section 4.*)

(*a.*)—MADRAS REGULATIONS—*concluded.*

YEAR AND NUMBER.		SUBJECT.
1807,	*II.*	*Salt-revenue.*
1808,	VII.	Martial Law.
1816,	*IV.*	*Village Munsifs.*
,,	V.	Village Panchâyats.
,,	*IX.* (s. 43 only).*	*Prosecution of Zila Magistrates.*
,,	XI.	Sections 8, 9, 10—Heads of villages: Section 11, cl. 1—Stolen property: Section 13—Discovery of corpses: Section 14—Register of persons confined by heads of villages; and Section 47—Magistrates charged with maintenance of peace.
,,	XII.	Reference of claims regarding land and produce to Village and District Panchâyats.
,,	*XIV.†*	*Native Pleaders.*
1817,	VII.	Maintenance of Bridges, &c.; Escheats.
,,	VIII. (s. 9 only)...	Sale for arrears of revenue of estate belonging to Native Officer or Soldier.
1819,	*I.*	*Land-revenue.*
1819,	II.	State Prisoners.
1821,	IV.‡	Petty thefts.
1822,	IV.	Explanation of Madras Regulation XXV., 1802.
,,	VII. (cl. 1 of s. 3 only).	Native Officers in Revenue and other Public Departments.
,,	IX. ... }	Embezzlement by public servants and malversation in revenue matters.
1823,	III. ... }	
1828,	VII.	Powers of Subordinate and Assistant Collectors.
1829,	V.	Hindu Wills and Estates.
1830,	I.	Prohibition of Widow-burning.
1831,	*III.*	*Unlawful assemblies; threatening officers; ryots refusing to attend at annual settlement.*
1831,	V. (s. 7, cl. 2 only. ...	Liability of Ministerial Officers for reception of improperly-stamped document.
,,	VI.	Hereditary Village Officers.
,,	X.	Prohibition of Sale of Estates of Minors for Arrears of Revenue.
1832,	III.	Limitation for Suits against orders of Revenue Authorities under Madras Regulation VII. of 1828.
,,	*VII.*	*Cantonments.*
,,	*XI.*	*Hidden Treasure.*
,,	*XIV.*	*Purchase of clothes from Soldiers.*

* The whole of Mad. Reg. IX. of 1816 has been repealed by Act XVI. of 1874.
† Mad. Reg. XIV. of 1816 has been repealed by Mad. Act II. of 1882.
‡ S. 6.

SECOND SCHEDULE—*concluded.*

(*See section 4.*)

(*b.*)*—ACTS OF THE SUPREME COUNCIL RELATING TO THE MADRAS PRESIDENCY.

YEAR AND NUMBER.	SUBJECT.
1837, XXXVI.	Criminal Jurisdiction of Collectors.
1838, *XII.*	*Hidden Treasure.*
1839, VII.	Tahsildárs.
1840, VIII.	Awards of Panchâyats.
,, *XVII.*	*Penalties for breach of Salt Laws.*
1844, VI.	Duties.
1846, *I.*†	*Pleaders.*
,, IX.	Harbours.
1849, X.	Commissioners of Revenue.
1852, *VII.*	*Penalties for breach of Salt Laws.*
1853, *XX.*†	*Pleaders.*
1855, X.	Section 10—Recusant witnesses.
,, *XIV.*‡	*Military Bazars.*
,, XXI.	Minors.
1856, *VIII.*	*Control of Gaols.*
1857, VII.	Uncovenanted Agency.
1858, I.	Compulsory Labour.
,, XIV.	Minors.
1859, XXIV.	Police.
1860, XXVIII.	Boundary Marks.
1869, *XI.*§	*Land Customs.*
,, *XXIV.*‖	*Salt.*

* So much of Sch. II. (*b*) as relates to Acts XII. of 1838, XIV. of 1855, VIII. of 1856, and XXIV. of 1869, has been repealed by Acts VI. of 1878, VIII. of 1878, XII. of 1876, and XVIII. of 1877, respectively; and so much as relates to Acts XVII. of 1840, VII. of 1852, and XI. of 1869, by Act XII. of 1891, Sch. I.

† Acts I. of 1846 and XX. of 1853 were repealed by Act XVIII. of 1879, s. 43, as amended by Act IX. of 1884, s. 9. In places to which s. 42 of Act XVIII. of 1879 extends.

‡ Act XIV. of 1855 has been repealed by Act XVI. of 1874.

§ Act XI. of 1869 has been repealed by Act XI. of 1882.

‖ Act XXIV. of 1869 has been repealed in places to which Act XI. of 1875 (Madras Salt Act) is extended.

Act XV. of 1874.

THIRD SCHEDULE.*

(*See section 5.*)

(*a.*)—BOMBAY REGULATIONS.

YEAR AND NUMBER.	SUBJECT.
1827, II.	Section 21 (caste questions); sections 47 to 54 (inclusive) and section 56 (pleaders).
,, IV.†	Section 26 (law applicable to suits): section 69, clauses *second* and *third* (attachment and distraint of crops).
,, V.	Preamble: section 9 (acknowledgments of debt): section 14 (interest): section 15 (mortgages and pledges).
,, VIII.	Administration of Estates.
,, *XII.*‡	*Preamble: section 19 (Magistrate's power to make rules):* section 20 (standards of weights and measures): section 27, clause 2 (supervision of suspected persons): section 37, clause *first* and *second* (responsibility of villages for robberies).
,, XIII.	Section 34, clause *third* (letter substituted for summons).
,, *XVI.*§	*Revenue Administration.*
,, *XXI.*‖	*Sections 1 to 16 inclusive (Duty on opium): sections 46, 54 to 66 inclusive (spirits): sections 67 to 73 inclusive (penalties).*
,, *XXII.*	*Section 18 (furnishing false certificates to soldiers): section 19 (buying uniform, arms, &c.): section 20 (recovery of value of embezzled stores):* sections 40, 41, 42, 43 (passage of troops): *sections 45, 46, 47 (requisitions for military aid).*
,, XXV.	State Prisoners.
1830, *V.*§	*Section 1 (Revenue Commissioners): section 2, clauses 1, 2, 3 (Collectors and Sub-Collectors).*
,, XIII.	Civil jurisdiction of Jágirdárs.
1831, *XV.*§	*Village Patels.*
1832, *II.*§	*Realization of Revenue.*
1833, *V.*§	*Hereditary Officers.*

* So much of Sch. III. (*a*) as relates to Bom. Regs. XII. of 1827, preamble, XVI. of 1827, and XXI. of 1827, has been repealed by Act XII. of 1891, Sch. I.; and so much as relates to ss. 18, 19, 20, 45, 46, and 47 of Bom. Reg. XXII. of 1827, by Act XIII. of 1889, s. 2 and sch.

† Cls. 2 and 3 of s. 69 of Bom. Reg. IV. of 1827 have been repealed in the whole of the Bombay Presidency (except the Scheduled Districts) by Bom. Act V. of 1879.

‡ The preamble and part of s. 19 of Bom. Reg. XII. of 1827 have been repealed by Act XVII. of 1862.

§ Bom. Regs. XVI. of 1827, V. of 1830, XV. of 1831, II. of 1832, and V. of 1833, have been repealed in the whole of the Bombay Presidency (except the Scheduled Districts) by Bom. Act V. of 1879.

‖ Bom. Reg. XXI. of 1827 has been repealed by Bom. Act V. of 1873.

THIRD SCHEDULE—*concluded.*

(*See section 5.*)

(*b.*)—ACTS OF THE SUPREME COUNCIL RELATING TO THE BOMBAY PRESIDENCY.*

YEAR AND NUMBER.	SUBJECT.
1838, XVI.	Judiciary.
,, *XVIII.*†	*Sureties.*
,, XIX.	Coasting Vessels.
1839, XX.	Revenue.
1840, XV.	Agents of Foreign Sovereigns.
1842 *XIII.*†	*Revenue.*
,, *XVII.*†	*Revenue Commissioners.*
1843, *XI.*‡	*Hereditary Officers.*
1844, XIX.	Abolition of Town Duties.
1846, I.	Pleaders.
,, *III.*†	*Sections 1, 5, and 6—Boundary Marks.*
1852, *III.*§	*Spirituous Liquors.**
,, *XXI.*†	*Deputy Collectors.**
1853, XX.	Pleaders.
1855, X.	Section 10—Recusant Witnesses.
~~1856,~~ ~~VIII.~~	~~Control of Gaols.~~ repealed by act 9 of 1894
1864, XX.	Minors.

FOURTH SCHEDULE.‖

(*See section 6.*)

(*a.*)—BENGAL REGULATIONS (LOWER PROVINCES).

YEAR AND NUMBER.	SUBJECT.
1793, I.	Perpetual Settlement.
,, II.	Collection of Land Revenue.
,, VIII.	Rules for Decennial Settlement.
,, XI.	Native laws of inheritance to Revenue-paying land.
,, XIX.	Title to lands exempt from Revenue.
,, XXXVII.	Title to lands exempt from Revenue under bádsháhi grants.

* So much of Sch. III. (*b*) as relates to Acts XI. of 1843, III. of 1852, and XXI. of 1852, has been repealed by Act XII. of 1891, Sch. I.

† Acts XVIII. of 1838, XIII. and XVII. of 1842, III. of 1846, and XXI. of 1852, have been repealed in the whole of the Bombay Presidency (except the Scheduled Districts) by Bom. Act V. of 1879.

‡ Act XI. of 1843 has been repealed by Bom. Act III. of 1874.

§ Act III. of 1852 has been repealed by Bom. Act V. of 1878.

‖ So much of Sch. IV. (*a*) as relates to Ben. Regs. XLVIII. of 1793, III. of 1794, s. 12, XV of 1797, I. of 1798, XVII. of 1806, XI. of 1811, XIX. of 1814, XX. of 1817, ss. 28 and 32, and VI. of 1819, has been repealed by Act XII. of 1891, Sch. I.; so much as relates to Ben. Reg. XX. of 1810, by Act XIII. of 1889, s. 2 and sch.; so much as relates to Ben. Regs. XLVIII. of 1793 and IV. of 1829, by Act XII. of 1876; so much as relates to Ben. Reg. V. of 1817, by Act VI. of 1878; and so much as relates to Ben. Reg. XX. of 1825, by Act X. of 1882.

Act XV. of 1874.

FOURTH SCHEDULE—*continued.*

(*See section 6.*)

(*a.*)—BENGAL REGULATIONS (LOWER PROVINCES)—*continued.*

YEAR AND NUMBER.	SUBJECT.
1793, XXXVIII.	Section 1—Preamble: Section 2—Prohibition of loans by Covenanted Servants.
,, *XLVIII.**	*Quinquennial Register of Revenue-paying lands.*
1794, III.†	Sections *12*, 13, *16*, *17*, *18*, *19*, *and* 20—*Arrears of Revenue.*
1797, *XV.**	*Fees for keeping Revenue Records.*
1798, *I.*‡	*Conditional Sales of Land.*
1799, V.	Wills and Intestacies of Natives.
1800, VIII.	Pargana Register of Lands.
1801, I.	Arrears of Revenue: Division of Joint Estates.
1804, X.	Punishment by Courts Martial of certain State Offences.
1806, IX.	Passage of Troops.
,, *XVII.*‡	*Sections 7 and 8—Mortgages and conditional sales.*
1810, XIX.	Maintenance of Bridges, &c.; Escheats.
,, *XX.*	*Camp-followers, Búzárs, Cantonments.*
1811, *XI.*§	*Revision of jama on lands ordered to be divided.*
1812, V.	Collection of Land-Revenue.
,, XI.	Removal of Foreign Emigrants.
1814, *XIX.*§	*Partition of Revenue-paying Estates.*
1817, *V.*	*Hidden Treasure.*
,, XX.	Section *28*—Abkari: Section 29—Criminal process in Salt and Opium Departments: Section 30, clauses 1, 2, and 5—Building forts; Collecting sepoys and stores; Encroaching on roads: Section *32*—Despatches of treasure.
1818, III.	State Prisoners.
1819, II.	Resumption of Revenue-free lands.
,, *VI.*‖	*Ferries.*
1821, IV.	Powers of Collectors and Magistrates.
1822, III.	Boards of Land-revenue.
,, XI.	Section 36—Khás management of purchases by Government: Section 38—Non-liability of Government for errors of Courts.
1823, VI.	Indigo Contracts.
,, VII.	Prohibition of loans to Covenanted Civil Servants.
1825, VI.	Passage of Troops.
,, IX.	Defaulting Málguzárs.
,, XI.	Alluvion and Diluvion.

* Ben. Regs. XLVIII. of 1793 and XV. of 1797 have been repealed by Ben. Act VII. of 1876.

† S. 12 of Ben. Reg. III. of 1794 has been repealed entirely, and ss. 16 to 20, so far as they relate to the recovery of money belonging to Government, by Ben. Act VII. of 1880.

‡ Ben. Regs. I. of 1798 and XVII. of 1806 have been repealed in the Lower Provinces by Act IV. of 1882.

§ Ben. Reg. XI. of 1811 and XIX. of 1814 have been repealed by Ben. Act VIII. of 1876.

‖ Ben. Reg. VI. of 1819 has been repealed by Ben. Act I. of 1885.

FOURTH SCHEDULE—*concluded.*

(*See section 6.*)

(*a.*)—BENGAL REGULATIONS (LOWER PROVINCES.)—*concluded.*

YEAR AND NUMBER.	SUBJECT.
1825, XIII.	Settlement of resumed Lákhiráj land.
,, XIV.	Authority to confirm Lákhiráj tenures: Native Grants.
,, XX.	Courts Martial and Military Courts of Requests.
1827, III.	Section 5—Evidence.
,, V.	Management of Estates under Attachment.
1828, III.	Appeals from decisions of Revenue Authorities.
,, IV.	Section 1 and Section 2, clause 4—Time during which Collectors are to be considered engaged in making settlements.
1829 I.	Commissioners of Revenue and Board of Revenue.
,, XVII.	Widow-burning.
1830, V.	Sections 1 and 5—Indigo Contracts.

(*b.*)*—ACTS OF THE SUPREME COUNCIL RELATING TO THE LOWER PROVINCES.

YEAR AND NUMBER.	SUBJECT.
1836, X.	Indigo Contracts.
,, *XX.*†	*Batwáras.*
,, XXI.	Creating Zilas.
1838, *XI.*†	*Remuneration of Amins effecting Partitions.*
1841, XII.	Section 2—No interest on arrears of Land-revenue.
1847, IX.	Assessment of new lands.
1848, XX.	Land-revenue.
1850, XLIV.	Board of Revenue.
1853, XIX.	Section 26—Recusant witnesses.
1855, *XXXII.*‡	*Embankments.*
1856, XII.	Civil Court Amins.
,, *XX.*	*Chaukidars.*
,, *XXI.*§	*Abkári.*
1857, XIII.	Opium.
1858, XXXI.	Settlement of Alluvion.
,, XL.	Minors.
1859, XI.	Sales for Arrears of Revenue.
1860, *XXIII.*‖	*Abkári.*

* So much of Sch. IV. (*b*) as relates to Acts XX. of 1836, XI. of 1838, XX. and XXI. of 1856, and XXIII. of 1860, has been repealed by Act XII. of 1891, Sch. I.

† Acts XX. of 1836 and XI. of 1838 have been repealed by Ben. Act VIII. of 1876.

‡ Act XXXII. of 1855 has been repealed (except as to Orissa and the Sundarbans) by Ben. Act VI. of 1873.

§ Act XXI. of 1856 has been repealed in the Lower Provinces by Ben. Act VII. of 1878.

‖ Act XXIII. of 1860 has been repealed in the Lower Provinces by Ben. Act II. of 1876.

Act XV. of 1874.

FIFTH SCHEDULE.*

(*See section 7.*)

(*a.*)—BENGAL REGULATIONS (NORTH-WESTERN PROVINCES).

YEAR AND NUMBER.	SUBJECT.
1793, XXXVIII.	Section 1—Preamble: Section 2—Prohibition of loans by Covenanted Servants.
1798, *I.*†	*Conditional sales of land.**
1799, V.	Wills and Administration to Natives.
1804, X.	Punishment by Courts Martial of certain State Offences.
1806, XI.	Passage of Troops.
,, *XVII.*†	*Sections 7 and 8—Mortgages and conditional sales.**
1810, *XIX.*‡	*Maintenance and Repair of Bridges, &c.; Escheats.**
,, *XX.*	*Camp-followers, Bázárs, Cantonments.**
1812, XI.	Removal of Foreign Emigrants.
1817, *V.*§	*Hidden Treasure.**
1818, III.	State Prisoners.
1819, *VI.*‖	*Ferries.**
1822, XI.	Section 38—Non-liability of Government for errors of Courts.
1823, VI.	Indigo Contracts.
,, VII.	Prohibition of loans to Covenanted Civil Servants.
1825, VI.	Passage of Troops.
,, XI.	Alluvion and Dereliction.
,, *XX.*	*Courts Martial and Courts of Requests.**
1827, III.	Section 5—Evidence.
,, V.	Management of Estates under Attachment.
1829, XVII.	Widow-burning.
1830, V.	Sections 1 and 5—Indigo Contracts.
1831, *VI.*	*Section 6—Sadr Adálat.**
,, *XI.*¶	*Sections 1, 2, 4, 5, 6, 8*—Police-powers of Tahsildárs.
1833, IX.	Deputy Collectors.
,, *I.*	*Board of Revenue, Allahabad.**

* So much of Sch. V. as relates to Ben. Reg. XX. of 1810 has been repealed by Act XIII. of 1889, s. 2 and sch.; and so much as relates to Ben. Regs. I. of 1798, XVII. of 1806, XIX. of 1810, V. of 1817, VI. of 1819, VI. of 1831, and XI. of 1831, ss. 4 and 8, by Act XII. of 1891, Sch. I.

So far as Act XV. of 1874 relates to Ben. Reg. I. of 1833, it has been repealed by Act VIII. of 1875; and so far as it relates to Ben. Reg. XX. of 1825, by Act X. of 1882.

† Ben. Regs. I. of 1798 and XVII. of 1806 have been repealed in the North-Western Provinces by Act IV. of 1882.

‡ Ben. Reg. XIX. of 1810 has been repealed in the North-Western Provinces by Act VIII. of 1884.

§ Ben. Reg. V. of 1817 has been repealed by Act VI. of 1878.

‖ Ben. Reg. VI. of 1819 has been repealed in the North-Western Provinces by Act XVII. of 1878.

¶ Ss. 4 and 8 of Reg. XI. of 1831 have been repealed by Acts XII. of 1876 and XVI. of 1874 respectively.

FIFTH SCHEDULE—*concluded.*

(*See section 7.*)

(*b.*)—ACTS OF THE SUPREME COUNCIL RELATING TO THE N.-W. PROVINCES.

YEAR AND NUMBER.	SUBJECT.
1836, X.	Indigo Contracts.
,, XXI.	Creating Zilas.
1853, XIX.	Section 26—Recusant witnesses.
1854, XVI.	Police.
1856, XII.	Civil Court Amins.
,, XX.	Chaukidárs.
1857, XIII.	Opium.
1858, XL.	Minors.

SIXTH SCHEDULE.

(*See sections 2, 3, 4, 5, 6, and 7.*)

PART I.

SCHEDULED DISTRICTS, MADRAS.

I.—In Ganjam.

(1.) The Gumsur Maliahs, including Chokapad.

(2.) The Surada Maliahs.

(3.) The Chinna Kimedi Maliahs.

(4.) The Pedda Kimedi Maliahs.

(5.) The Bodaguda Maliahs.

(6.) The Surangi Maliahs.

(7.) The Parla Kimedi Maliahs.

(8.) The Muttás of Koradá and Ronaba (otherwise called Srikaima).

(9.) [*Repealed by Act XII. of 1891, Sch. I.*]

(10.) The Juradá Maliah.

(11.) The Jalantrá Maliah.

(12.) The Mandasa Maliah.

(13.) The Budarasinghi Maliah.

(14.) The Kuttingia Maliah.

Act XV. of 1874.

SIXTH SCHEDULE—*concluded.*

(*See sections 2, 3, 4, 5, 6, and 7.*)

PART I.—SCHEDULED DISTRICTS, MADRAS—*concluded.*

II.—In Vizagapatam.

(1.) The Jeypur Zamindári.

(2.) Golconda Hills, West of the River Boderu.*

(3.) The Madugol Maliahs.

(4.) The Kasipur Zamindári.

(5.) The Panchipenta Maliahs.

(6.) Mondemkolla, in the Merangi Zamindári.

(7.) The Konda Muttá of Merangi.†

(8.) The Gumma and Konda Muttás of Kurpam.

(9.) The Kottam, Rám, and Konda Muttás of Pálkonda.

*III.—In the Godávari District.**

(1.) The Bhadráchalam Táluq.

(2.) The Rákapilli Táluq.

(3.) The Rampá Country.

IV.—In the Indian Ocean.

The Laccadive Islands, including Minicoy.

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* The Ducharte and Guditeru Muttás in the Golconda Hills have been transferred from the Vizagapatam to the Godávari District.—See *Fort St. George Gazette*, July 5, 1881, Pt. I., p. 336. For additional Scheduled Districts in the Godávari District, see foot-note on p. 1221, *supra*.

† The word "Merangi" has been substituted for "Belgám" by Act XII. of 1891, Sch. II.

GENERAL INDEX.

VOLUME I.

A.

Abolition of jurisdiction of Civil Courts as to immoveables in Bhutan Dvars, XVI of 1869, p. 802.

Abolition of town-duties and mukats, and taxes upon trades and professions in the Bombay Presidency, XIX of 1844, p. 60.

Accountants, security to be given by public, XII of 1850, p. 81.

Acquisition of land for public purposes, X of 1870, p. 843.

Acting Judges, appointment of, XVI of 1867, p. 683.

Actionable wrong, compensation for loss occasioned by the death of person caused by, XIII of 1855, p. 138.

Acts done and levies made under certain Regulations not to be questioned in any Court, VII of 1836, p. 2.

Acts done during Mutiny, indemnity for, XXXIV of 1860, p. 351.

Aden, administration of civil and criminal justice at, II of 1864, p. 493.

Adjudication and recovery of forfeitures of property for mutiny, XXV of 1857, p. 232.

Adjudication of claims to property seized as forfeited, IX of 1859, p. 267.

Adjudication of claims to waste-lands, XXIII of 1863, p. 487.

Adjudication of titles to rent-free estates, Bombay, XI of 1852, p. 109.

Administration of civil and criminal justice at Aden, II of 1864, p. 493.

Administration of justice in Darjeeling, XIX of 1867, p. 688.

Administration of justice in Ganjam and Vizagapatam, XXIV of 1839, p. 17.

Administration of mortgaged estates of deceased persons, XXIII of 1855, p. 142.

Administration of public revenues in Calcutta, XVIII of 1856, p. 179

Administrator, office and duties of, XI of 1874, p. 1178.

Administrators may sue or be sued for certain wrongs, XII of 1855, p. 136.

Agent for Sardars in the Dekkhan, appointment of assistant to, XIX of 1835, p. 1.

Agents of Foreign Sovereigns; extension of certain Regulations to, XV of 1840, p. 26.

Agent to Governor-General, Ramghar, XX of 1854, p. 127.

Aliens, naturalization of, XXX of 1852, p. 117.

Allowance of interest, XXXII of 1839, p. 25.

Alluvion and diluvion, IX of 1847, p. 68.

Alluvion, settlement of land gained by, XXXI of 1858, p. 246.

Amendment of forms necessary for the sale of patni-tenures in Bengal, XXXIII of 1850, p. 95.

Amins, employment of, by the Civil Courts of Bengal, XII of 1856, p. 162.

Anchorage, regulations for ports of, IX. of 1846, p. 62.

Appointment and maintenance of chaukidars in Bengal, XX of 1856, p. 180.

Appointment and remuneration of pleaders in the Courts of the East India Company, I. of 1846, p. 61.

Appointment of a Commissioner of Revenue at Madras, X of 1849, p. 78.

Appointment of Acting Judges, XVI of 1867, p. 683.

Appointment of assistant to Agent for Sardars in the Dekkhan, XIX of 1835, p. 1.

Appointment of Marriage Registrars, III of 1872, p. 967.

Appointment of Sessions Judges, Bengal and North-Western Provinces, XIX of 1871, p. 903.

Apprentices, binding of, XIX of 1850, p 84.

Appropriation of unclaimed dividends in insolvent estates, XXVII of 1841, p. 46.

Arrears of land-revenue, interest and penalty upon, not to be demanded, XII of 1841, p. 38.

Arrears of rent, forfeiture of deposits at sales of land for, XXV of 1850, p. 94.

Arrears of rent or revenue, property distrained for, in Presidency of Fort St. George, may be sold by tahsildars, VII of 1839, p. 16.

Arrears of rent, summary suits for, VI of 1853, p. 121.

Arrears of revenue, sales of land for, XI of 1859, p. 300.

Arrest and detention of State prisoners, amendment of law relating to, III of 1858, p. 245.

Articles of War (Indian), V. of 1869, p. 742.

Artificers, breach of contract by, XIII of 1859, p. 324.

Arts and manufactures, excise on spirits used in, XVI of 1863, p. 479.

Assam, exercise of powers in, VIII of 1874, p. 1209.
Assessment of land gained from the sea or from rivers by alluvion or diluvion in Bengal, Behar, and Orissa, IX of 1847, p. 68.
Assessment of the pandhari-tax, Central Provinces, XIV of 1867, p. 682.
Assessment of unassessed land in Madras town, XII of 1851, p. 104.
Assignees, rights under fire and marine policies to vest in, V of 1866, p. 617.
Assistant Judge of Zila Court of Puna may be appointed assistant to the Agent of Sardars in the Dekkhan, XIX of 1835, p. 1.
Assistant to Agent for Sardars in the Dekkhan, appointment of, XIX of 1835, p. 1.
Asylums (Lunatic), XXVI of 1858, p. 259.
Attendance and examination of witnesses in the Civil Courts, Madras and Bombay, X of 1855, p. 134.
Attendance of landholders before Collectors, enforcement of, XXI of 1848, p. 77.
Authority of certain Regulations as to acts done and levies made, VII of 1836, p. 2.
Avoidance of loss by default of public accountants, XII of 1850, p. 81.
Awards of panchayats, VIII of 1840, p. 26.

B.

Behaviour of public servants, inquiries into, XXXVII of 1850, p. 97.
Bengal, recovery of rent in, X of 1859, p. 269.
Better control of gaols in the Bombay Presidency, VIII of 1856, p. 158.
Better custody of State prisoners, XXXIV of 1850, p. 96.
Better management of boats and catamarans in the Madras Roads, IV of 1842, p. 47.
Better prevention of desertion by European soldiers, XI of 1856, p. 160.
Bhutan Dvars, abolition of jurisdiction of Civil Courts as to immoveables in, XVI of 1869, p. 802.
Bills of exchange, summary procedure on, V of 1866, p. 617.
Bills of lading, amendment of law relating to, IX of 1856, p. 159.
Binding of apprentices, XIX of 1850, p. 84.
Birbhum, ghatwali lands in, V of 1859, p. 266.
Board of Custom, Salt, and Opium, and the Sadr Board in the Lower Provinces of Bengal, consolidation of, XLIV of 1850, p. 101.
Boats and catamarans in the Madras Roads, better management of, IV of 1842, p. 47.
Bombay and Kolaba shore-nuisances, XI of 1853, p. 123.
Bombay Civil Courts, XIV of 1869, p. 788.
Bombay, extension of certain Regulations to Agents of Foreign Sovereigns in, XV of 1840, p. 26.
Bombay, Governor in Council of, may prohibit levy of haqqs, &c., XX of 1839, p. 16.
Bombay Letters Patent, correction of two clerical errors in the, XXIII of 1866, p. 642.
Bombay, municipal taxes in, VII of 1836, p. 2.
Bombay police, amendment of law for regulation of, XLVIII of 1860, p. 458.
Bombay, rules regarding coasting and other vessels, XIX of 1838, p. 6.
Bombay, suits regarding tenures to be brought in Civil and not in Revenue Courts in, XVI of 1838, p. 5.
Bombay University, XXII. of 1857, p. 227; empowered to confer Degrees, XLVII of 1860, p. 457.
Books, registration of, XXV of 1867, p. 696.
Boundaries of Tributary Mahals in Katak, settlement of, XX of 1850, p. 90.
Boundary-disputes, Madras, XXVIII of 1860 p. 345.
Boundary-marks, Madras, XXVIII of 1860, p. 345.
Breaches of contract by artificers, workmen, and labourers, XIII of 1859, p. 324.
Breaches of duty, trial of pilots for, XII of 1859, p. 316.
Bridges and roads, tolls on public, VIII of 1851, p. 102; Amending Act, XV of 1864, p. 508.
British India, recruiting in, for Foreign States, IV of 1874, p. 1208.

C.

Calcutta, securing land-revenue of, XXIII of 1850, p. 92.
Calcutta University, II of 1857, p. 196; empowered to confer Degrees, XLVII of 1860, p. 457.
Canals and drainage, Northern India, VIII of 1873, p. 1087.
Carriers, rights and liabilities of common, III of 1865, p. 518.
Caste, non-forfeiture of rights for loss of, XXI of 1850, p. 91.
Catamarans and boats in the Madras Roads, better management of, IV of 1842, p. 47.
Catamarans and boats in the Presidency of Fort St. George, regulations for the management of, IX of 1846, p. 62.
Cattle-trespass, I. of 1871, p. 881.
Central Provinces pandhari-tax, XIV of 1867, p. 682.
Change of religion involving loss of caste, XXI of 1850, p. 91.
Charges (public) on landholders, II of 1853, p. 120.
Charitable Societies, registration of, XXI of 1860, p. 338.

Charter Courts, proceedings in lunacy in, XXXIV of 1858, p. 247.
Chaukidars in Bengal, appointment and maintenance of, XX of 1856, p. 180; extension of Chaukidari Act (XX of 1856) to places where there is no jemadar of police, XXII of 1871, p. 904.
Chief Commissioners' powers, XXXII of 1867, p. 704.
Chief Secretaries, powers of, to be exercised by Secretaries to Government, II of 1834, p. 1.
Chittagong District, removal of certain tracts on the eastern border of the, from the jurisdiction of tribunals established under the general Regulations and Acts, XXII of 1860, p. 342.
Christian Marriage (Indian), XV of 1872, p. 1047.
Civil and criminal justice at Aden, administration of, II of 1864, p. 493.
Civil Court amins, Bengal, XII of 1856, p. 162.
Civil Courts, Bombay, XIV of 1869, p. 788.
Civil Courts excluded from cognizance of suits relating to land in the Bhutan Dvars, XVI of 1869, p. 802.
Civil Courts, Jhansi, XVIII of 1867, p. 684.
Civil Courts, Madras, III of 1873, p. 1078.
Civil Courts, Madras and Bombay, witnesses in, X of 1855, p. 134.
Claims of subordinate proprietors in Oudh, XXIII of 1866, p. 643.
Claims to property seized as forfeited, adjudication of, IX of 1859, p. 267.
Claims to waste-lands, adjudication of, XXIII of 1863, p. 487.
Clerical errors in Letters Patent, Bombay, XXIII of 1866, p. 642.
Coasting and other vessels, Bombay, XIX of 1838, p. 6.
Coasting trade of India, freedom of, V of 1850, p. 79.
Coinage and mint, XXIII of 1870, p. 858.
Coin, amendment of definition of, XIX of 1872, p. 1074.
Collection of land-customs on certain foreign frontiers of the Bombay Presidency, XXIX of 1857, p. 239.
Collection of revenue in certain parts of Ganjam and Vizagapatam, XXIV of 1839, p. 17.
Collectors, enforcement of attendance of landholders before, XXI of 1848, p. 77.
Commercial law of British India, V of 1866, p. 617.
Commissioner in Sindh may be delegated with certain powers, V of 1868, p. 708.
Commissioner of Revenue at Madras, appointment of, X of 1849, p. 78.
Commitment of State prisoners, warrant of, XXXIV of 1850, p. 96.
Common carriers, rights and liabilities of, III of 1865, p. 518.
Compensation for loss occasioned by death, XIII of 1855, p. 138.
Compulsory labour for the prevention of mischief by inundation, I of 1858, p. 243.
Consolidating the Board of Customs, Salt, and Opium and Sadr Board of Revenue, in the Lower Provinces of Bengal, XLIV of 1850, p. 101.
Constitution of office of Official Trustee, XVII of 1864, p. 509.
Contract, breaches of, by artificers, workmen, and labourers, XIII of 1859, p. 324.
Contract for cultivation of indigo, X of 1836, p. 2.
Contract (Indian), IX of 1872, p. 988.
Conveyance of land, simplification of modes of, XXXI of 1854, p. 131.
Conveyance of properties vested in mortgagees and trustees, XXVII of 1866, p. 646.
Copyright, XX of 1847, p. 70.
Coroners, IV of 1871, p. 889.
Costs of petitions for certain moneys transferred to Government may be dealt with by High Courts at Presidency-towns, V of 1870, p. 809.
Court Fees, VII of 1870, p. 810.
Court of Wards, XXVI of 1854, p. 129.
Court of Wards in the Presidency of Fort St. George, minors under the, XXI of 1855, p. 140.
Courts of the East India Company, appointment and remuneration of pleaders in the, I of 1846, p. 61.
Criminal jurisdiction of Collectors and their subordinates, Madras, XXXVI of 1837, p. 5.
Criminal tribes and eunuchs, registration of, XXVII of 1871, p. 910.
Crown, all subjects of the, empowered to hold land, IV of 1837, p. 4.
Cultivation of indigo, contract for, X of 1836, p. 2.
Cultivation of poppy, XIII of 1857, p. 214.
Curators in cases of successions, XIX of 1841, p. 38.
Custody of State prisoners, XXXIV of 1850, p. 96.
Customs duties (inland), levy of certain, in the Presidency of Fort St. George, VI of 1844, p. 58.

D.

Damages for loss occasioned by death, XIII of 1855, p. 138.
Damages, judicial officers when not liable to suit for, XVIII of 1859, p. 83.
Damages, recusant witnesses in Civil Courts, Madras and Bombay, liable to suit for, X of 1855, p. 134.
Darjiling, administration of justice in, XIX of 1867, p. 688.
Darogas of police subject to tahsildars, XVI of 1854, p. 127.

Death, compensation for loss occasioned by, XIII of 1855, p. 138.
Deceased person's mortgaged estates, administration of, XXIII of 1855, p. 142.
Definition of coin, amendment of, XIX of 1872, p. 1074.
Dehra Dun, validity given to the operation of the general Regulations in the, XXI of 1871, p. 903.
Dekkhan, appointment of assistant to agent for Sardars in the, XIX of 1835, p. 1.
Demand of interest or penalty upon any arrear of land-revenue not to be made, XII of 1841, p. 38.
Deposits made on incomplete sales of land, forfeiture to Government of, XXV of 1850, p. 94.
Desertion by European soldiers from land forces, XI of 1856, p. 160.
Detention of State prisoners, amendment of law relating to, III of 1858, p. 245.
Diluvion, Bengal, Behar, and Orissa, IX of 1847, p. 68.
Disputes between workmen and employers, IX of 1860, p. 336.
Dissolution of native converts' marriages, XXI of 1866, p. 634.
Distribution of unclaimed dividends in insolvent estates, XXVII of 1841, p. 46.
District of Malabar, suppression of outrages in the, XX of 1859, p. 325.
Districts of Ganjam and Vizagapatam, administration of justice and collection of revenue in certain parts of, XXIV of 1839, p. 17.
Divorce, IV of 1869, p. 721.
Divorce among Parsis, XV of 1865, p. 602.
Doubts, removal of, as to the jurisdiction of the High Court of Bombay over the Province of Sindh, V of 1872, p. 987; Amending Act, XX. of 1872, p. 1074.
Dower, amendment of law of, XXIX of 1839, p. 19.
Drainage, Northern India, VII. of 1839, p. 1087.
Duty, trial of pilots for breach of, XII of 1859, p. 316.

E.

East India Company, appointment and remuneration of pleaders in the Courts of the, I of 1846, p. 61.
Education of male minors, XXI of 1855, p. 140.
Effects of insane officers and soldiers, XIV of 1873, p. 1110.
Embankments in Bengal, XXXII of 1855, p. 147.
Embezzlement, &c., criminal jurisdiction of collectors in cases of, XXXVI of 1837, p. 5.
Employers and workmen, disputes between, IX of 1860, p. 336.
Employment of uncovenanted agency in the revenue and judicial departments in the Presidency of Fort St. George, VII of 1857, p. 211.
Encroachment below high-water mark in Bombay and Kolaba, XI of 1853, p. 123.
Endowment (religious), XX of 1863, p. 481.
Enforcement of attendance of landholders before Collectors, XXI of 1848, p. 77.
Estates of lunatics subject to Mofussil Courts, XXXV of 1858, p. 254.
Estates, Oudh, I of 1869, p. 710.
Eunuchs and criminal tribes, registration of, XXVII of 1871, p. 710.
European and American convicts, penal servitude substituted for transportation in respect of, XXIV of 1855, p. 143.
European deserters, XI of 1856, p. 160.
European vagrancy, IX of 1874, p. 1210.
Evidence, I of 1872, p. 919; Amending Act, XVIII of 1872, p. 1073.
Evidence, amendment of law of, XIX of 1853, p. 125.
Evidence of prisoners, XV of 1869, p. 796.
Excise on spirits used in arts and manufactures, XVI of 1863, p. 479.
Executors, administrators, or representatives may sue and be sued for certain wrongs, XII of 1855, p. 136.
Exemption of certain territory in the Province of Khandesh from the operation of the general Regulations, XI of 1846, p. 63.
Exemption of certain villages in the Bombay Presidency from the operation of the Regulations and Acts in force there, IV of 1868, p. 707.
Exercise of powers in Assam, VIII of 1874, p. 1209.
Exercise of powers in Sylhet, XII of 1874, p. 1219.
Extension of certain Regulations to Agents of Foreign Sovereigns, XV of 1840, p. 26.
Extension of Chaukidari Act to places where there is no jemadar of police, XXII of 1871, p. 904.

F.

Facilitating removal of shore-nuisances, Bombay and Kolaba, XI of 1853, p. 123.
Fees of sheriffs, VIII of 1852, p. 107.
Female infants, prevention of the murder of, VIII of 1870, p. 841.
Femes covert, property of, XXIV of 1841, p. 43.
Ferries in Burma, II of 1873, p. 1075.
Fire and marine policies, rights under, to vest in assignees, V of 1866, p. 617.
Fishing vessel, Bombay coast, rules as to, XIX of 1838, p. 6.
Forced labour, Madras, I of 1858, p. 243.
Foreign frontiers of the Bombay Presidency, collection of land-revenue on certain, XIX of 1857, p. 239.

Foreign recruiting, IV of 1874, p. 1208.
Foreign sovereigns, extension of certain Regulations to agents of, XV of 1840, p. 26.
Foreign States, recruiting in British India for, IV of 1874, p. 1208.
Foreigners, III of 1864, p. 499.
Forfeited property, adjudication of claims to, IX of 1859, p. 267.
Forfeiture of deposits made on incomplete sales of land, XXV of 1850, p. 94.
Forfeiture of property of Mapillas convicted of outrages, XX of 1859, p. 325.
Forfeiture of property for mutiny, XXV of 1857, p. 232.
Forms necessary for the sale of patni-tenures in Bengal, amendment of, XXXIII of 1850, p. 95.
Freedom of the coasting trade of India, V of 1850, p. 79.

G.

Gambling, N.-W. P., &c., III of 1867, p. 677.
Ganges, levy of tolls for the improvement of the navigation of the, I of 1867, p. 673.
Ganjam and Vizagapatam, administration of justice and collection of revenue in certain parts of, XXV of 1839, p. 17.
Gaols, better conduct of, in the Presidency of Bombay, VIII of 1856, p. 158.
Gas Co. (Oriental), V of 1857, p. 204.
Gazette of India, publication of certain orders and other matter in the, XXXI of 1863, p. 493.
General Clauses, I of 1868, p. 705.
General Regulations and Acts, removal of certain tracts on the eastern border of the Chittagong district from the jurisdiction of tribunals established under the, XXII of 1860, p. 342.
General Regulations and Acts, removal of Santhal districts from the, X of 1857, p. 211.
General Regulations and Acts within the Dehra Dun, validity given to the operation of the, XXI of 1871, p. 903.
General Regulations, exemption of certain territory in the Province of Khandesh from the operation of the, XI of 1846, p. 63.
General Regulations, Santhal districts removed from operation of the, XXXVII of 1855, p. 156.
Ghatwali lands, Birbhum, V of 1859, p. 266.
Good government of Howrah, XXI of 1857, p. 221.
Government Savings Banks, V of 1873, p. 1084.
Government seal, III of 1862, p. 478.
Government, Secretaries to exercise powers of Chief Secretaries to, II of 1834, p. 1.
Governor-General in Council may create new zilas in Bengal, or alter limits of existing, XXI of 1836, p. 3.
Governor in Council of Bombay may prohibit levy of haqqs, &c., XX of 1839, p. 16.
Governor in Council to appoint the Assistant Judge of the Zila Court of Puna to be assistant to the Agent for Sardars in the Dekkhan, XIX of 1835, p. 1.

H.

Haqqs, Governor in Council of Bombay may prohibit levy of, XX of 1839, p. 16.
Harbour craft, Bombay coast, Rules as to, XIX of 1838, p. 6.
Harbours in Madras Presidency, regulations for the management of boats and catamarans in the, IX of 1864, p. 62.
Harbour Regulations, Madras, amendment of certain, IV of 1842, p. 47.
High Court of N.-W. P., amendment of procedure of, XIII of 1869, p. 787.
High Courts at presidency towns may deal with costs of petitions for certain moneys transferred to Government, V of 1870, p. 809.
Hindu widows, re-marriage of, XV of 1856, p. 177.
Hindu wills, XXI of 1870, p. 856.
Howrah, order and good government of, XXI of 1857, p. 221.

I.

Idiots, property of, XXIV of 1841, p. 43.
Illusory appointments: infant's property, XXIV of 1841, p. 43.
Improvements of the navigation of the Ganges, levy of tolls for the, I of 1867, p. 673.
Improvements made by *bonâ-fide* holders of land under defective titles secured to them, value of, XI of 1855, p. 135.
Incomplete sales of land, forfeiture to Government of deposits made on, XXV of 1850, p. 94.
Incumbrances on estates of taluqdars in Oudh, XXIV of 1870, p. 863.
Indemnity for acts during Mutiny, XXXIV of 1860, p. 351.
Indian Articles of War, V of 1869, p. 742.
Indian Christian Marriage, XV of 1849, p. 1047.
Indian Contract, IX of 1872, p. 988.
Indian Evidence, I of 1872, p. 919; Amending Act, XVIII of 1872, p. 1073.
Indian Penal Code, XLV of 1860, p. 353; Amending Acts, XXVII of 1870, p. 879; XIX of 1872, p. 1074.
Indian Post Office, XIV of 1866, p. 618.
Indian Volunteers, good order and discipline of, XX of 1869, p. 804.
Indigo contracts, X of 1836, p. 2.
Infant's property, XXIV of 1841, p. 43.
Infant's property: illusory appointments, XXIV of 1841, p. 43.

Inheritance, amendment of law of, XXX of 1839, p. 21.
Inland customs duties, levy of certain, in the Presidency of Fort St. George, VI of 1844, p. 58.
Inoculation in Kumaon and Garhwal, prohibition of the practice of, XXIV of 1868, p. 709.
Inquiries into the behaviour of public servants, XXXVII of 1850, p. 97.
Insane officers and soldiers, effects of, XIV of 1873, p. 1110.
Insolvent estates, appropriation of unclaimed dividends in, XXVII of 1841, p. 46.
Interest, allowance of, XXXII of 1839, p. 25.
Interest or penalty upon any arrear of land-revenue not to be demanded, XII of 1841, p. 38.
Intestate and testamentary succession, X of 1865, p. 521.
Intestate succession among the Parsis, XXI of 1865, p. 613.
Inundation, compulsory labour for the prevention of mischief by, I of 1858, p. 243.
Irrigation, Madras Irrigation Co. may charge for water supplied for purposes other than, XXX of 1865, p. 616.
Irrigation, Northern India, VIII of 1873, p. 1087.

J.

Jama fixed by settlement, liability of malguzars of Katak for, VI of 1837, p. 4.
Jemadar of police, extension of Chaukidari Act, XX of 1856, to places where there is no, XXII of 1871, p. 904.
Jhansi Courts, XVIII of 1867, p. 684.
Judicial oaths, X of 1873, p. 1107.
Judicial officers, protection of, XVIII of 1850, p. 83.
Judicial officers when not liable to suit for damages, XVIII of 1850, p. 83.
Judicial offices, appointment to certain, XVI of 1867, p. 683.
Jurisdiction of Civil Courts as to immoveables in Bhutan Dvars, XVI of 1869, p. 802.
Jurisdiction (criminal) of Collectors in cases of embezzlement, &c., XXXVI of 1837, p. 5.
Jurisdiction of High Court of Bombay over the Provinces of Sindh, removal of doubts as to the, V. of 1872, p. 987.
Justice, administration of, in Ganjam and Vizagapatam, XXIV of 1839, p. 17.

K.

Karatoya river, tolls on, XXII of 1856, p. 194.
Katak, liability of malguzars of, for jama fixed by settlement, VI of 1837, p. 4.
Katak, settlement of boundaries of tributary mahals of, XX of 1850, p. 90.
Khandesh, exemption of certain territory in the province of, from the operation of the general Regulations, XI of 1846, p. 68.
Kolaba shore-nuisances, XI of 1853, p. 123.
Kumaon and Garhwal, prohibition of the practice of inoculation in, XXIV of 1868, p. 709.

L.

Labour (compulsory) for the prevention of mischief by inundation, I of 1858, p. 243.
Labourers, breach of contract by, XIII of 1859, p. 324.
Land acquisition, X of 1870, p. 843.
Land, all subjects of Crown empowered to hold, IV of 1837, p. 4.
Land-customs, collection of, on certain foreign frontiers of the Bombay Presidency, XXIX of 1857, p. 239.
Land forces, better prevention of desertion by European soldiers from, XI of 1856, p. 168.
Land, forfeiture to Government of deposits made on incomplete sales of, XXV of 1850, p. 94.
Land gained by alluvion, settlement of, XXXI of 1858, p. 246.
Landholders, enforcement of attendance of, before Collectors, XXI of 1848, p. 77.
Landholders, public charges on, II of 1853, p. 120.
Land in the Bhutan Dvars, Civil Courts excluded from cognizance of suits relating to, XVI of 1869, p. 802.
Land, property in, IV of 1837, p. 4.
Land-revenue, N.-W. P., XIX of 1873, p. 1124.
Land-revenue of Calcutta, XXIII of 1850, p. 92.
Land-revenue of Madras, securing of, XII of 1851, p. 104.
Land, sales of, for arrears of revenue, XI of 1859, p. 300.
Land, simplification of modes of conveyance of, XXXI of 1854, p. 131.
Lands (ghatwali) in Birbhum, V of 1859, p. 266.
Lands (waste), adjudication of claims to, XXIII of 1863, p. 487.
Law of dower, amendment of, XXIX of 1839, p. 19.
Law of evidence, amendment of, XIX of 1853, p. 125.
Law of evidence, I of 1872, p. 919.
Law of inheritance, amendment of, XXX of 1839, p. 21.
Laws in the Punjab, IV of 1872, p. 973.
Laws local extent, XV of 1874, p. 1229.
Legal obstacles to re-marriage of Hindu widows, XV of 1856, p. 177.
Letters Patent, Bombay, correction of two clerical errors in, XXIII of 1866, p. 642.

Levies made under certain Regulations not to be questioned in any Court, VII of 1836, p. 2.
Levy of certain inland customs duties, Presidency of Fort St. George, VI of 1844, p. 58.
Levy of haqqs, &c., Governor in Council of Bombay may prohibit, XX of 1839, p. 16.
Levy of tolls for the improvement of the navigation of the Ganges, I of 1867, p. 673.
Levy of tolls on public roads and bridges, VIII of 1851, p. 102; Amending Act, XV of 1864, p. 508.
Liability of malguzars of Katak for jama fixed by settlement, VI of 1837, p. 4.
Licensing of stage-carriages, XVI of 1861, p. 474.
Literary Societies, registration of, XXI of 1860, p. 338.
Loss by default of public accountants, XII of 1850, p. 81.
Loss occasioned by death, compensation for, XIII of 1855, p. 138.
Loss of caste, non-forfeiture of rights for, XXI of 1850, p. 91.
Lunacy, proceedings in, Chartered (Supreme) Courts, XXXIV of 1858, p. 247.
Lunatic asylums, XXXVI of 1858, p. 259.
Lunatic soldiers' property, XIV of 1873, p. 1110.
Lunatics, estates of, subject to Mofussil Courts, XXXV of 1858, p. 254.
Lunatics, property of, XXIV of 1841, p. 43.

M.

Madras Civil Courts, III of 1873, p. 1078.
Madras, criminal jurisdiction of Collectors in cases of embezzlements, &c., in, XXXVI of 1837, p. 5.
Madras Irrigation and Canals Co., XXX of 1865, p. 616.
Madras Presidency, levy of certain inland duties in, VI of 1844, p. 58.
Madras, property distrained for rent or revenue, or may be sold by tahsildars, VII of 1839, p. 16.
Madras Roads, better management of boats and catamarans in the, IV of 1842, p. 47.
Madras, salt law in, amendment of, XVII of 1840, p 27.
Madras, securing the land-revenue of, XII of 1851, p. 104.
Madras University, XXVII of 1857, p. 234; empowered to confer Degrees, XLVII of 1860, p. 457.
Mahal, liability of malguzars of Katak for jama fixed by settlement of, VI of 1837, p. 4.
Malabar, suppression of outrages in the district of, XX of 1859, p. 325.
Malabar, war-knives in, XXIV of 1854, p. 128.
Male minors, education of, XXI of 1855, p. 140.
Malguzars of Katak, liability of, for jama fixed by settlement, VI of 1837, p. 4.
Management of boats and catamarans in the Presidency of Fort St. George, regulations for, IX. of 1846, p. 62.
Manufacture of opium, XIII of 1857, p. 214.
Manufactures and arts, excise on spirits used in, XVI of 1863, p. 479.
Mappillas, suppression of outrages by, XX of 1859, p. 325.
Marine and fire policies, rights under, to vest in assignees, V of 1866, p. 617.
Marriage and divorce among Parsis, XV of 1865, p. 602.
Marriage (Native Christian), XV of 1872, p. 1047.
Marriage of male and female minors, subject to the Court of Wards, XX of 1855, p. 140.
Marriages of native converts, dissolution of, XXI of 1866, p. 364.
Marriage Registrars, appointment of, III of 1872, p. 967.
Married women's property, III of 1874 p. 1205.
Measures of capacity, XXXI of 1871, p. 916.
Mesne-profits and improvements, XI of 1855, p. 135.
Minors under the Court of Wards in the Presidency of Fort St. George, XXI of 1855, p. 140.
Mint, XXIII of 1870, p. 858.
Modes of conveying land, simplification of, XXXI of 1854, p. 131.
Mofussil Courts, estates of lunatics subject to, XXXV of 1858, p. 254.
Mortgaged estates of deceased persons, administration of, XXIII of 1855, p. 142.
Mortgagees and trustees, XXVIII of 1866, p. 661.
Moveable and immoveable property, protection of, against wrongful possession, XIX of 1841, p 38.
Murder of female infants, prevention of, VIII of 1870, p. 841.
Murderous outrages in certain districts of the Punjab, suppression of, XXIII of 1867, p. 692.
Municipalities, N.-W. P. and Oudh, XV of 1873, p. 1112.
Municipal taxes, Bombay, VII of 1836, p. 2.
Mutiny, forfeiture of property for, XXV of 1857, p. 232.
Mutiny, indemnity for acts during, XXXIV of 1860, p. 351.

N.

Native convert's marriage, dissolution of, XXI of 1866, p. 634.

Naturalization of aliens, XXX of 1852, p. 117.
Navigation, Northern India, VIII of 1873, p. 1087.
Navigation of the Ganges, levy of tolls for the improvement of the, I of 1867, p. 673.
Newspapers, XXV of 1867, p. 696.
Non-forfeiture of rights for loss of caste, XXI of 1850, p. 91.
Northern India canals and drainage, VIII of 1873, p. 1087.
N.-W. P. and Oudh Municipalities, XV of 1873, p. 1112.
N.-W. P. and Oudh Village and Road Police, XVI of 1873, p. 1121.
N.-W.-P. High Court, amendment of procedure of, XIII of 1869, p. 787.
N.-W. P. Land-revenue, XIX of 1873, p. 1124.
N.-W. P. Police, XVI of 1854, p. 127.
Nuisances and encroachments below high-water mark in Bombay and Kolaba, XI of 1853, p. 123.

O.

Oaths, X of 1873, p. 1107.
Offences against the State, XI of 1857, p. 212.
Official Trustee, constitution of office of, XVII of 1864, p. 509.
Office and duties of Administrator, XI of 1874, p. 1178.
Office of Official Trustee, constitution of, XVII of 1864, p. 509.
Officers acting judicially when not liable to suit for damages, XVIII of 1850, p. 83.
Officers and soldiers, effects of insane, XIV of 1873, p. 1110.
Officers of Government indemnified for acts during Mutiny, XXXIV of 1860, p. 351.
Officers of the Supreme Court forbidden to trade, XV of 1848, p. 76.
Opium, Lower Provinces, XIII of 1857, p. 214.
Order and good government of Howrah, XXI of 1857, p. 221.
Oriental Gas Company, V of 1857, p. 204.
Oudh estates, I of 1869, p. 710.
Oudh, rights of taluqdars and others in certain estates in, I of 1869, p. 710.
Oudh sub-settlement, XXIII of 1866, p. 643.
Oudh taluqdars' relief, XXIV of 1870, p. 863.
Outrages in the district of Malabar, Suppression of, 325.

P.

Panchayats, awards of, VIII of 1840, p. 26.
Pandhari-tax, Central Provinces, XIV of 1867, p. 682.
Panjab laws, IV of 1872, p. 973.
Parsi Marriage and divorce, XV of 1865, p. 602.
Parsis, intestate succession among the, XXI of 1865, p. 613.
Patni tenures in Bengal, amendment of forms necessary for the sale of, XXXIII of 1850, p. 95.
Penal Code, XLV of 1860, p. 353; Amending Act, XXVII of 1870, p. 879.
Penal servitude, XXIV of 1855, p. 143.
Pensions, XXIII of 1871, p. 905.
Petitions for certain moneys transferred to Government, High Courts at Presidency-towns may deal with costs of, V of 1870, p. 809.
Pilots, trial of, XII of 1859, p. 316.
Pleaders in the Courts of the East India Company, amendment of law regarding appointment and remuneration of, I of 1846, p. 61; XIX of 1853, p. 126.
Police, Bombay, XIII. of 1856, p. 164; XLVIII of 1860, p. 458.
Police, N.-W. P., XVI of 1854, p. 127.
Police, regulation of, V of 1861, p. 464.
Police, regulation of, in the Presidency of Fort St. George, XXIV of 1859, p. 328.
Policies, rights under fire and marine, to vest in assignees, V of 1866, p. 617.
Poppy, cultivation of, XIII of 1857, p. 214.
Ports of anchorage, regulations for, IX of 1846, p. 62.
Post Office, XIV of 1866, p. 618.
Powers, exercise of, in Assam, VIII of 1874, p. 1209.
Powers, exercise of, in Sylhet, XII of 1874, p. 1219.
Powers of Chief Commissioners, XXXII of 1867, p. 704.
Practice of inoculation in Kumaon and Garhwal, prohibition of, XXIV of 1868, p. 709.
Presidency of Bombay, abolition of town-duties in the, XIX of 1844, p. 60.
Presidency of Fort St. George, levy of certain inland duties in, VI of 1844, p. 58.
Presidency of Fort St. George, property in, distrained for rent or revenue, may be sold by tahsildars, VII of 1839, p. 16.
Presidency of Fort St. George, regulations for the management of boats and catamarans in the, IX of 1846, p. 62.
Prevention of desertion by European soldiers, XI of 1856, p. 160.
Prevention of the murder of female infants, VIII of 1870, p. 841.
Prevention, trial, and punishment of offences against the State, XI of 1827, p. 212.
Printing presses and newspapers, XXV of 1867, p. 696.
Prisoners confined by order of Court, V of 1871, p. 895.
Prisoners' testimony, XV of 1869, p. 796.
Prisons, XXVI of 1870, p. 868.

Procedure of the High Court, N.-W. P., amendment of, XIII of 1869, p. 787.
Proceedings in lunacy in Charter Courts, XXXIV of 1858, p. 247.
Process, service of, upon prisoners, XV of 1869, p. 796.
Prohibition of the practice of inoculation in Kumaon and Garhwal, XXIV of 1868, p. 709.
Prohibition of use of war-knives, XXIV of 1854, p. 128.
Prohibition to levy haqqs, &c., XX of 1839, p. 16.
Property distrained for rent or revenue in Presidency of Fort St. George, tahsildars empowered to sell, VII of 1839, p. 16.
Property, forfeiture of, for mutiny, XXV of 1857, p. 232.
Property in land, IV of 1837, p. 4.
Property of infants, femes covert, idiots, lunatics, &c., XXIV of 1841, p. 43.
Property of lunatic soldiers, XIV of 1873, p. 1110.
Property of married women, III of 1874, p. 1205.
Property seized as forfeited, adjudication of claims to, IX of 1859, p. 267.
Property vested in mortgagees and trustees, conveyance of, XXVII of 1866, p. 646.
Protection of judicial officers, XVIII of 1850, p. 83.
Province of Khandesh, exemption of certain territory in the, from the operation of the general Regulations, XI of 1846, p. 63.
Province of Sindh, removal of doubts as to the jurisdiction of the High Court of Bombay over the, V of 1872, p. 987; Amending Act, XX of 1872, p. 1074.
Public accountants to give security, XII of 1850, p. 81.
Publication of certain orders and other matter in Gazette of India, XXXI of 1863, p. 493.
Public charges on landholders, II of 1853, p. 120.
Public ferries in Burma, II of 1873, p. 1075.
Public officers acting judicially when not liable to suit for damages, XVIII of 1850, p. 83.
Public revenues in Calcutta, administration of, XVIII of 1856, p. 179.
Public roads and bridges, levy of tolls on, VIII of 1851, p. 102; Amending Act, XV of 1864, p. 508.
Public sarais and puraos, XXII of 1867, p. 688.
Public servants, enquiries into behaviour of, XXXVII of 1850, p. 97.
Punjab, murderous outrages in certain districts of the, XXIII of 1867, p. 692.

Q.

Quarantine, rules relating to, I of 1870, p. 809.

R.

Rates which the Madras Irrigation and Canal Company may charge for water supplied for purposes other than irrigation, XXX of 1865, p. 616.
Recovery of forfeitures of property for mutiny, XXV of 1857, p. 232.
Recovery of rent in Bengal, X of 1859, p. 267.
Recruiting in British India for foreign States, IV of 1874, p. 1208.
Recusant witnesses liable to damages in civil suits, X of 1855, p. 134.
Registration of books, XXV of 1867, p. 696.
Registration of criminal tribes and eunuchs, XXVII of 1871, p. 910.
Registration of Societies, XXI of 1860, p. 338.
Regulations of ferries in Burma, II of 1873, p. 1075.
Regulation of irrigation and drainage in Northern India, VIII of 1873, p. 1087.
Regulation of police, V of 1861, p. 464.
Regulation of police in the Presidency of Fort St. George, XXIV of 1859, p. 328.
Regulation of printing presses and newspapers, XXV of 1867, p. 696.
Regulation of public sarais and puraos, XXII of 1867, p. 688.
Regulation of ships, rules for, X of 1841, p. 27; Amending Act, XI of 1850, p. 80.
Regulations, extension of certain, to agents of Foreign Sovereigns, XV of 1840, p. 26.
Regulations for management of boats and catamarans in the Presidency of Fort St. George, IX of 1846, p. 62.
Regulations, legality of acts done and levies made under certain, not to be questioned in any Court, VII of 1836, p. 2.
Relief of Oudh taluqdars, XXIV of 1870, p. 863.
Religion, change of, involving loss of caste, XXI of 1850, p. 91.
Religious endowments, XX of 1863, p. 481.
Re-marriage of Hindu widows, XV of 1856, p. 177.
Removal of certain tracts in the Eastern border of the Chittagong district from the jurisdiction of tribunals established under the general Regulations and Acts, XXII of 1860, p. 342.
Removal of doubts as to the jurisdiction of the High Court of Bombay over Sindh, V of 1872, p. 987; Amending Act, XX of 1872, p. 104.
Removal of legal obstacles to the marriage of Hindu widows, XV of 1856, p. 177.
Removal of shore-nuisances, Bombay and Kolaba, XI of 1853, p. 123.
Remuneration of pleaders in the Courts of the East India Company, I of 1846, p. 61.
Rent, Bengal, X of 1859, p. 269.

Rent-free estates, Bombay, titles to, XI of 1852, p. 109.
Rent, property distrained for, in Presidency of Fort St. George, may be sold by tahsildars, VII of 1839, p. 16.
Rent, summary suits for arrears of, VI of 1853, p. 121.
Repeal of the usury laws, XXVIII of 1855, p. 146.
Residue (undisposed) of the effects of testators, XXIV of 1841, p. 43.
Revenue, collection of, in certain parts of Ganjam and Vizagapatam, XXIV of 1839, p. 17.
Revenue Courts, Bombay, suits regarding tenures to be brought in civil and not in, XVI of 1838, p. 5.
Revenue, property distrained for, in Presidency of Fort St. George, may be sold by tahsildars, VII of 1839, p. 16.
Revenue, sales of land for arrears of, XI of 1859, p. 300.
Revenues, administration of public, in Calcutta, XVIII of 1856, p. 179.
Rights and liabilities of common carriers, III of 1865, p. 518.
Rights, non-forfeiture of, for loss of caste, XXI of 1850, p. 91.
Rights of taluqdars and others in certain estates in Oudh, I of 1869, p. 710.
Rights under fire and marine policies to vest in assignees, V of 1866, p. 617.
Roads and bridges, levy of tolls in public, VIII of 1851, p. 102; Amending Act, XV of 1864, p. 508.
Royal Charter, proceedings in lunacy in Courts established by, XXXIV of 1858, p. 247.
Rules as to coasting vessels, Bombay, XIX of 1838, p. 6.
Rules for registration of ships, X of 1841, p. 27; Amending Act, XI of 1850, p. 80.
Rules relating to quarantine, I of 1870, p. 809.

S.

Sadr Board of Revenue, XLIV of 1850, p. 101.
Sale of patni-tenures in Bengal, amendment of forms necessary for the, XXXIII of 1850, p. 95.
Sales of land for arrears of revenue, XI. of 1859, p. 300.
Salt-laws, Madras, amendment of, XVII of 1840, p. 27.
Salt, transit-duties on, in the Presidency of Fort St. George, VI of 1844, p. 58.
Santhal Districts removed from general Regulations and Acts, X of 1857, p. 211.
Santhal Districts removed from operation of general Regulations, Bengal Code, XXXVII of 1855, p. 156.
Sarais and puraos, XXII of 1867, p. 688.
Sardars in the Dekkhan, appointment of assistant to Agent for, XIX of 1835, p. 1.
Savings Banks (Government), V of 1873, p. 1084.
Scheduled Districts, XIV of 1874, p. 1220.
Scientific Societies, registration of, XXI of 1860, p. 338.
Seal, use of Government, III of 1862, p. 478.
Secretaries to Government to exercise powers of Chief Secretaries, II of 1834, p. 1.
Securing the land revenue of Madras, XII of 1851, p. 104.
Securities and moneys deposited in the Presidency High Courts, costs of petitions for the transfer of, to the Government, may be dealt with by such Courts, V of 1870, p. 809.
Securities deposited in High Courts, transfer to Government of, XXV of 1866, p. 642.
Security for removal of indigo plant, X of 1836, p. 2.
Security to be given by public accountants, XII of 1850, p. 81.
Service of process upon prisoners, XV of 1869, p. 796.
Sessions Judges, Bengal and N.-W. P., appointment of, XIX of 1871, p. 903.
Settlement, liability of malguzars of Katak for jama of mahal fixed by, VI of 1837, p. 4.
Settling boundaries of the tributary mahals in Katak, XX of 1850, p. 90.
Sheriffs' fees, VIII of 1852, p. 107.
Ship registry, X of 1841, p. 27; Amending Act, XI of 1850, p. 80.
Shore-nuisances, Bombay and Kobala, XI of 1853, p. 123.
Simplification of modes of conveyance of land, XXXI of 1854, p. 121.
Sindh, Commissioner of, may be delegated with certain powers, V of 1868, p. 708.
Sindh, doubts as to the jurisdiction of the High Court of Bombay over the Province of, V of 1872, p. 987; Amending Act, XX of 1872, p. 1074.
Slavery, V of 1843, p. 57.
Societies, registration of, XXI of 1860, p. 338.
Soldiers, desertion by European, from land-forces, XI of 1856, p. 160.
Soldiers, property of lunatic, XIV of 1873, p. 1010.
Spirits used in arts and manufactures, excise on, XVI of 1863, p. 479.
Stage-carriages, licensing and regulation of, XVI of 1861, p. 474.
State, offences against the, XI of 1857, p. 212.
State-prisoners, amendment of law relating to the arrest and detention of, III of 1858, p. 245.
State-prisoners, better custody of, XXXIV of 1850, p. 96.

Subordinate proprietors in Oudh, claims of, XXIII of 1866, p. 643.
Succession, X of 1865, p. 521.
Succession, curators in cases of, XIX of 1841, p. 38.
Succession (intestate) among the Parsis, XXI of 1865, p. 613.
Suit for compensation for loss occasioned by death, XIII of 1855, p. 138.
Suit for damages, officers acting judicially when not liable to, XVIII of 1850, p. 83.
Suit for damages, recusant witnesses in Civil Courts, Madras and Bombay, liable to, X of 1855, p. 134.
Suits for wrongs by and against executors, administrators, or representatives, XII of 1855, p. 136.
Suits regarding tenures to be brought in Civil and not in Revenue Courts, Bombay, XVI of 1853, p. 121.
Summary procedure on bills of exchange, V of 1866, p. 617.
Summary suits for arrears of rent, V of 1853, p. 121.
Supreme Courts of Judicature, estates of lunatics not subject to, XXXV of 1858, p. 254.
Supreme Courts, officers of, forbidden to trade, XV of 1848, p. 76.
Suppression of murderous outrages in certain districts of the Punjab, XXIII of 1867, p. 692.
Suppression of outrages in the district of Malabar, XX of 1859, p. 325.
Sylhet, exercise of powers in, XII of 1874, p. 1219.

T.

Tahsildars, darogas of police subject to, XVI of 1854, p. 127.
Tahsildars empowered to sell property distrained in Presidency of Fort St. George, VII of 1839, p. 16.
Taluqdars of Oudh, relief of, XXIV of 1870, p. 863.
Taluqdars of Oudh, rights of certain, I of 1869, p. 710.
Taxes (Municipal), Bombay, VII of 1836, p. 2.
Taxes upon trades and professions in the Presidency of Bombay, abolition of, XIX of 1844, p. 60.
Testators, undisposed residue of, effects of, XXIV of 1841, p. 43.
Testimony of prisoners, XV of 1869, p. 796.
Titles to rent-free estates, Bombay, XI of 1852, p. 109.
Tobacco, duties on, IV of 1857, p. 201.
Tolls, levy of, for the improvement of the navigation of the Ganges, I of 1867, p. 673.
Tolls on Karatoya river, XX of 1856, p. 194.
Tolls on public roads and bridges, VIII of 1851, p. 102; Amending Act, XV of 1864, p. 508.
Town duties and mukats in the Presidency of Bombay, abolition of, XIX of 1844, p. 60.
Trade (coasting) of India, freedom of, V of 1850, p. 79.
Trading, officers of the Supreme Courts forbidden from, XV of 1848, p. 76.
Transfer to Government of securities and moneys deposited in the Presidency High Courts, costs of petitions for the, may be dealt with by such Courts, V of 1870, p. 809.
Transfer to Government of securities deposited in the High Courts, XXV of 1866, p. 642.
Transit duties, salt, Madras, VI of 1844, p. 58.
Transportation, European and American convicts punishable with penal servitude in lieu of, XXIV of 1855, p. 143.
Trespass by cattle, I of 1871 p. 881.
Trial of offences against the State, XI of 1857, p. 212.
Trial of pilots, XII of 1859, p. 316.
Tributary mahals of Katak, settlement of boundaries of, XX of 1850, p. 90.
Trustee, constitution of office of Official, XVII of 1864, p. 509.
Trustees and mortgages, powers of, XXVIII of 1866, p. 661.

U.

Unclaimed dividends in insolvent estates, appropriation of, XXVII of 1841, p. 46.
Uncovenanted agency, Madras, VII of 1857, p. 211.
Undisposed residue of the effects of testators, XXIV of 1841, p. 43.
University of Bombay, XXII of 1857, p. 227; empowered to confer Degrees, XLVII. of 1860, p. 457.
University of Calcutta, II of 1857, p. 196; empowered to confer Degrees, XLVII of 1860, p. 457.
University of Madras, XXVII of 1857, p. 234; empowered to confer Degrees, XLVII of 1860, p. 457.
Use of war-knives prohibited, XXIV of 1854, p. 128.
Usury laws, repeal of the, XXVIII of 1855, p. 146.

V.

Vagrancy (European), IX of 1874, p. 1210.
Validity of awards signed by majority of members, VIII of 1840, p. 26.
Value of improvements made by *boná-fide* holders under defective titles secured to them, XI of 1855, p. 135.
Vessels employed on the coasts of Bombay, rules regarding, XIX of 1838, p. 6.

Village and Road Police, N.-W. P. and Oudh, XVI of 1873, p. 1121.
Villages in the Bombay Presidency exempted from the operation of the Regulations and Acts, IV of 1868, p. 707.
Volunteers, good order and discipline of, XX of 1869, p. 804.

W.

Wards, Court of, XXVI of 1854, p. 129.
War, Indian Articles of, V of 1869, p. 742.
War-knives in Malabar, XXIV of 1854, p. 128.
Warrant of commitment of State prisoners, XXXIV of 1850, p. 96.
Waste-lands, adjudication of claims to, XXIII of 1863, p. 487.
Water supplied for purposes other than irrigation by Madras Irrigation Co., XXX of 1865, p. 616.
Weights and measures of capacity, XXXI of 1871, p. 916.
Whipping, VI of 1864, p. 505.
Widows entitled to dower out of equitable estates, XXIX of 1839. p. 19.
Widows, re-marriage of Hindu, XV of 1856. p. 177.
Wills made before 1866, XXV of 1838, p. 9.
Wills of Hindus, XXI of 1870, p. 856.
Witnesses in Civil Courts, Madras and Bombay, X. of 1855, p. 134.
Workmen and employers, disputes between, IX. of 1860, p. 336.
Workmen, breach of contract by, XIII of 1859, p. 324.
Wrongful possession in cases of successions, protection of property against, XIX of 1841, p. 38.
Wrongs, suit for, by and against executors. administrators, &c., XII of 1855, p. 136,

Z.

Zila Court of Puna, Assistant Judge of, may be appointed by the Governor in Council of Bombay to be assistant to the Agent for Sardárs in the Dekkhan, XIX of 1835, p. 1.
Zilas, power to create new, and alter limits of existing, XXI of 1836, p. 3.

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